

PROPERTY CODE

CHAPTER 576

S. B. No. 748

AN ACT

relating to adoption of a nonsubstantive revision of the statutes relating to property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. ADOPTION OF CODE. The Property Code is adopted to read as follows:

"PROPERTY CODE

"TITLE 1. GENERAL PROVISIONS

"Chapter 1. General Provisions

"[Chapters 2-4 reserved for expansion]

"TITLE 2. CONVEYANCES

"Chapter 5. Conveyances

"[Chapters 6-10 reserved for expansion]

"TITLE 3. PUBLIC RECORDS

"Chapter 11. Provisions Generally Applicable to
Public Records

"Chapter 12. Recording of Instruments

"Chapter 13. Effects of Recording

"[Chapters 14-20 reserved for expansion]

"TITLE 4. ACTIONS AND REMEDIES

"Chapter 21. Eminent Domain

"Chapter 22. Trespass to Try Title

"Chapter 23. Partition

"Chapter 24. Forcible Entry and Detainer

"Chapter 25. Trial of Right of Property

"[Chapters 26-40 reserved for expansion]

"TITLE 5. LIENS AND EXEMPT PROPERTY

"SUBTITLE A. EXEMPT PROPERTY

"Chapter 41. Homestead

"Chapter 42. Personal Property

Additions in text indicated by underline; deletions by ~~strikeouts~~

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"Chapter 43. Exempt Public Property

"[Chapters 44-50 reserved for expansion]

"SUBTITLE B. LIENS

"Chapter 51. Provisions Generally Applicable
to Liens

"Chapter 52. Judgment Lien

"Chapter 53. Mechanic's, Contractor's, or
Materialman's Lien

"Chapter 54. Landlord's Liens

"Chapter 55. Hospital Lien

"Chapter 56. Liens Against Mineral Property

"Chapter 57. Railroad Laborer's Lien

"Chapter 58. Farm, Factory, and Store Worker's Liens

"Chapter 59. Self-Service Storage Facility Liens

"Chapter 60. Newspaper Employee's Lien

"[Chapters 61-69 reserved for expansion]

"Chapter 70. Miscellaneous Liens

"TITLE 6. ESCHEAT

"Chapter 71. Escheat of Decedent's Estate

"Chapter 72. Escheat of Personal Property Held by Person
Other Than Banking Organization or Life
Insurance Company

"Chapter 73. Escheat of Inactive Accounts Held by
Banking Organizations

"[Chapters 74-80 reserved for expansion]

"TITLE 7. CONDOMINIUMS

"Chapter 81. Condominiums

"[Chapters 82-90 reserved for expansion]

"TITLE 8. LANDLORD AND TENANT

"Chapter 91. Provisions Generally Applicable to
Landlords and Tenants

"Chapter 92. Residential Tenancies

"[Chapters 93-100 reserved for expansion]

Additions in text indicated by underline; deletions by ~~strikeouts~~

"TITLE 9. TRUSTS**"SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO TRUSTS****"Chapter 101. Provisions Generally Applicable to
Trusts**

"[Chapters 102-110 reserved for expansion]

**"SUBTITLE B. TEXAS TRUST ACT: CREATION, OPERATION, AND
TERMINATION OF TRUSTS****"Chapter 111. General Provisions****"Chapter 112. Creation, Validity, Modification, and
Termination****"Chapter 113. Administration****"Chapter 114. Liabilities, Rights, and Remedies of
Trustees, Beneficiaries, and Third
Persons****"Chapter 115. Jurisdiction, Venue, and Proceedings**

"[Chapters 116-120 reserved for expansion]

"SUBTITLE C. MISCELLANEOUS TRUSTS**"Chapter 121. Employees' Trusts****"Chapter 122. Charitable Trusts**

"[Chapters 123-140 reserved for expansion]

"TITLE 10. MISCELLANEOUS BENEFICIAL PROPERTY INTERESTS**"SUBTITLE A. PERSONS UNDER DISABILITY****"Chapter 141. Gifts to Minors****"Chapter 142. Management of Property Recovered
in Suit by a Next Friend**

"[Chapters 143-160 reserved for expansion]

"SUBTITLE B. FIDUCIARIES**"Chapter 161. Management and Control of Securities****"Chapter 162. Construction Payments, Loan Receipts, and
Misapplication of Trust Funds**

"[Chapters 163-180 reserved for expansion]

"SUBTITLE C. POWERS OF APPOINTMENT**"Chapter 181. Powers of Appointment**

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§ 1.001

"PROPERTY CODE

"TITLE 1. GENERAL PROVISIONS

"CHAPTER 1. GENERAL PROVISIONS

"Section 1.001. PURPOSE OF CODE

"Section 1.002. CONSTRUCTION OF CODE

"Section 1.003. INTERNAL REFERENCES

"PROPERTY CODE

"TITLE 1. GENERAL PROVISIONS

"CHAPTER 1. GENERAL PROVISIONS

"Section 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

"(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable by:

"(1) rearranging the statutes into a more logical order;

"(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

"(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

"(4) restating the law in modern American English to the greatest extent possible. (New.)

"Section 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code. (New.)

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"Section 1.003. INTERNAL REFERENCES. In this code:

"(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

"(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears. (New.)

"[Chapters 2-4 reserved for expansion]

"TITLE 2. CONVEYANCES

"CHAPTER 5. CONVEYANCES

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 5.001. FEE SIMPLE

"Section 5.002. FAILING AS A CONVEYANCE

"Section 5.003. PARTIAL CONVEYANCE

"Section 5.004. CONVEYANCE BY AUTHORIZED OFFICER

"Section 5.005. ALIENS

"Section 5.006. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE
COVENANT ACTION

"[Sections 5.007-5.020 reserved for expansion]

"SUBCHAPTER B. FORM AND CONSTRUCTION OF INSTRUMENTS

"Section 5.021. INSTRUMENT OF CONVEYANCE

"Section 5.022. FORM

"Section 5.023. IMPLIED COVENANTS

"Section 5.024. ENCUMBRANCES

"Section 5.025. WOOD SHINGLE ROOF

"Section 5.026. DISCRIMINATORY PROVISIONS

"[Sections 5.027-5.040 reserved for expansion]

"SUBCHAPTER C. FUTURE ESTATES

"Section 5.041. FUTURE ESTATES

"Section 5.042. ABOLITION OF COMMON-LAW RULES

"Section 5.043. REFORMATION OF INTERESTS VIOLATING RULE
AGAINST PERPETUITIES

"[Sections 5.044-5.060 reserved for expansion]

Additions in text indicated by underline; deletions by ~~strikeouts~~

"SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE

"Section 5.061. AVOIDANCE OF FORFEITURE AND ACCELERATION

"Section 5.062. NOTICE

"Section 5.063. RIGHT TO CURE DEFAULT

"TITLE 2. CONVEYANCES

"CHAPTER 5. CONVEYANCES

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 5.001. FEE SIMPLE. (a) An estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law. Words previously necessary at common law to transfer a fee simple estate are not necessary.

"(b) This section applies only to a conveyance occurring on or after February 5, 1840. (V.A.C.S. Art. 1291.)

"Section 5.002. FAILING AS A CONVEYANCE. An instrument intended as a conveyance of real property or an interest in real property that, because of this chapter, fails as a conveyance in whole or in part is enforceable to the extent permitted by law as a contract to convey the property or interest. (V.A.C.S. Art. 1301.)

"Section 5.003. PARTIAL CONVEYANCE. (a) An alienation of real property that purports to transfer a greater right or estate in the property than the person making the alienation may lawfully transfer alienates only the right or estate that the person may convey.

"(b) Neither the alienation by deed or will of an estate on which a remainder depends nor the union of the estate with an inheritance by purchase or descent affects the remainder. (V.A.C.S. Art. 1290.)

"Section 5.004. CONVEYANCE BY AUTHORIZED OFFICER. (a) A conveyance of real property by an officer legally authorized to sell the property under a judgment of a court within the state passes absolute title to the property to the purchaser.

"(b) This section does not affect the rights of a person who is not or who does not claim under a party to the conveyance or judgment. (V.A.C.S. Art. 1295.)

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"Section 5.005. ALIENS. An alien has the same real and personal property rights as a United States citizen. (V.A.C.S. Art. 156a.)

"Section 5.006. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE COVENANT ACTION. (a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim.

"(b) To determine reasonable attorney's fees, the court shall consider:

"(1) the time and labor required;

"(2) the novelty and difficulty of the questions;

"(3) the expertise, reputation, and ability of the attorney;

and

"(4) any other factor. (V.A.C.S. Art. 1293b.)

"[Sections 5.007-5.020 reserved for expansion]

"SUBCHAPTER B. FORM AND CONSTRUCTION OF INSTRUMENTS

"Section 5.021. INSTRUMENT OF CONVEYANCE. A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing. (V.A.C.S. Art. 1288.)

"Section 5.022. FORM. (a) The following form or a form that is the same in substance conveys a fee simple estate in real property with a covenant of general warranty:

'The State of Texas,

'County of _____.

'Know all men by these presents, That I, _____, of the _____ (give name of city, town, or county), in the state aforesaid, for and in consideration of _____ dollars, to me in hand paid by _____, have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said _____, of the _____ (give name of city, town, or county), in the state of _____, all that certain

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_____ (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said _____, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said _____, his heirs, and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

'Witness my hand, this _____ day of _____, A.D. 19 ____.

'Signed and delivered in the presence of _____.

"(b) A covenant of warranty is not required in a conveyance.

"(c) The parties to a conveyance may insert any clause or use any form not in contravention of law. (V.A.C.S. Arts. 1292, 1293.)

"Section 5.023. IMPLIED COVENANTS. (a) Unless the conveyance expressly provides otherwise, the use of 'grant' or 'convey' in a conveyance of an estate of inheritance or fee simple implies only that the grantor and the grantor's heirs covenant to the grantee and the grantee's heirs or assigns:

"(1) that prior to the execution of the conveyance the grantor has not conveyed the estate or any interest in the estate to a person other than the grantee; and

"(2) that at the time of the execution of the conveyance the estate is free from encumbrances.

"(b) An implied covenant under this section may be the basis for a lawsuit as if it had been expressed in the conveyance. (V.A.C.S. Art. 1297.)

"Section 5.024. ENCUMBRANCES. 'Encumbrance' includes a tax, an assessment, and a lien on real property. (V.A.C.S. Art. 1298.)

"Section 5.025. WOOD SHINGLE ROOF. To the extent that a deed restriction applicable to a structure on residential property

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requires the use of a wood shingle roof, the restriction is void.
(V.A.C.S. Art. 1293c.)

"Section 5.026. DISCRIMINATORY PROVISIONS. (a) If a restriction that affects real property, or a provision in a deed that conveys real property or an interest in real property, whether express or incorporated by reference, prohibits the use by or the sale, lease, or transfer to a person because of race, color, religion, or national origin, the provision or restriction is void.

"(b) A court shall dismiss a suit or part of a suit to enforce a provision that is void under this section. (V.A.C.S. Art. 1293a.)

"[Sections 5.027-5.040 reserved for expansion]

"SUBCHAPTER C. FUTURE ESTATES

"Section 5.041. FUTURE ESTATES. A person may make an inter vivos conveyance of an estate of freehold or inheritance that commences in the future, in the same manner as by a will.
(V.A.C.S. Art. 1296.)

"Section 5.042. ABOLITION OF COMMON-LAW RULES. (a) The common-law rules known as the rule in Shelley's case, the rule forbidding a remainder to the grantor's heirs, and the doctrine of worthier title do not apply in this state.

"(b) A deed, will, or other conveyance of property in this state that limits an interest in the property to a particular person or to a class such as the heirs, heirs of the body, issue, or next of kin of the conveyor or of a person to whom a particular interest in the same property is limited is effective according to the intent of the conveyor.

"(c) Status as an heir or next of kin of a conveyor or the failure of a conveyor to describe a person in a conveyance other than as a member of a class does not affect a person's right to take or share in an interest as a conveyee.

"(d) Subject to the intention of a conveyor, which controls unless limited by law, the membership of a class described in this section and the participation of a member in a property interest

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conveyed to the class are determined under this state's laws of descent and distribution.

"(e) This section does not apply to a conveyance taking effect before January 1, 1964. (V.A.C.S. Art. 1291a.)

"Section 5.043. REFORMATION OF INTERESTS VIOLATING RULE AGAINST PERPETUITIES. (a) Within the limits of the rule against perpetuities, a court shall reform or construe an interest in real or personal property that violates the rule to effect the ascertainable general intent of the creator of the interest. A court shall liberally construe and apply this provision to validate an interest to the fullest extent consistent with the creator's intent.

"(b) The court may reform or construe an interest under Subsection (a) of this section according to the doctrine of cy pres.

"(c) If an instrument that violates the rule against perpetuities may be reformed or construed under this section, a court shall enforce the provisions of the instrument that do not violate the rule and shall reform or construe under this section a provision that violates or might violate the rule.

"(d) This section applies to legal and equitable interests conveyed by an inter vivos instrument or a will that takes effect on or after September 1, 1969, and this section applies to an appointment made on or after that date regardless of when the power was created. (V.A.C.S. Art. 1291b.)

"[Sections 5.044-5.060 reserved for expansion]

"SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE

"Section 5.061. AVOIDANCE OF FORFEITURE AND ACCELERATION. A seller may enforce a forfeiture of interest and the acceleration of the indebtedness of a purchaser in default under an executory contract for conveyance of real property used or to be used as the purchaser's residence only after notifying the purchaser of the seller's intent to enforce the forfeiture and acceleration and the expiration of the following periods:

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"(1) if the purchaser has paid less than 10 percent of the purchase price, 15 days after the date notice is given;

"(2) if the purchaser has paid 10 percent or more but less than 20 percent of the purchase price, 30 days after the date notice is given; and

"(3) if the purchaser has paid 20 percent or more of the purchase price, 60 days after the date notice is given. (V.A.C.S. Art. 1301b, Sec. 1 (part).)

"Section 5.062. NOTICE. (a) Notice under Section 5.061 of this code must be in writing. If the notice is mailed, it must be by registered or certified mail. The notice must be conspicuous and printed in 10-point boldfaced type or uppercase typewritten letters, and must include the statement:

NOTICE

YOU ARE LATE IN MAKING YOUR PAYMENT UNDER
THE CONTRACT TO BUY YOUR HOME. UNLESS YOU
MAKE THE PAYMENT BY (date) THE SELLER HAS
THE RIGHT TO TAKE POSSESSION OF YOUR HOME
AND TO KEEP ALL PAYMENTS YOU HAVE MADE TO
DATE.

"(b) Notice by mail is given when it is mailed to the purchaser's residence or place of business. Notice by other writing is given when it is delivered to the purchaser at the purchaser's residence or place of business. (V.A.C.S. Art. 1301b, Sec. 1 (part).)

"Section 5.063. RIGHT TO CURE DEFAULT. Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property used or to be used as the purchaser's residence may, at any time before expiration of the applicable period provided by Section 5.061 of this code, avoid forfeiture of interest and acceleration of indebtedness by complying with the terms of the contract up to the date of compliance. (V.A.C.S. Art. 1301b, Sec. 2.)

"[Chapters 6-10 reserved for expansion]

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"TITLE 3. PUBLIC RECORDS

"CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RECORDS

"Section 11.001. PLACE OF RECORDING

"Section 11.002. ENGLISH LANGUAGE

"Section 11.003. GRANTEE'S ADDRESS

"Section 11.004. DUTY OF RECORDER

"Section 11.005. JUDGMENT PROVING AN INSTRUMENT OR CORRECTING A
CERTIFICATE

"Section 11.006. INSTRUMENT AFFECTING TITLE TO LAND IN ARCHER
COUNTY

"TITLE 3. PUBLIC RECORDS

"CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RECORDS

"Section 11.001. PLACE OF RECORDING. (a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located. However, if such an instrument grants a security interest by a utility as defined in Section 35.01, Business & Commerce Code, as amended, the instrument must be recorded as required by Section 35.02 of that code.

"(b) If an instrument has been recorded in a proper county, the subsequent creation of a new county containing property conveyed or encumbered by the instrument does not affect the recording's validity or effect as notice. The county court of the new county shall at its own expense:

"(1) obtain a certified transcript of the record of all instruments conveying or encumbering property in the new county;

"(2) deposit the transcript for public inspection in the recorder's office of the new county; and

"(3) make an index of the transcript. (V.A.C.S. Arts. 6630, 6661.)

"Section 11.002. ENGLISH LANGUAGE. An instrument relating to real or personal property may not be recorded unless it is in English. An authenticated instrument not in English that was

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executed before August 22, 1897, however, may be recorded and operate as constructive notice from the date of filing if:

"(1) a correct English translation is recorded with the original instrument; and

"(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths. (V.A.C.S. Art. 6629.)

"Section 11.003. GRANTEE'S ADDRESS. (a) An instrument executed after December 31, 1981, conveying an interest in real property may not be recorded unless:

"(1) a mailing address of each grantee appears in the instrument or in a separate writing signed by the grantor or grantee and attached to the instrument; or

"(2) a penalty filing fee equal to the greater of \$25 or twice the statutory recording fee for the instrument is paid.

"(b) The validity of a conveyance as between the parties is not affected by a failure to include an address of each grantee in the instrument or an attached writing.

"(c) Payment of a filing fee and acceptance of the instrument by the county clerk for recording creates a conclusive presumption that the requirements of this section have been met. (V.A.C.S. Art. 6626, Sec. (b).)

"Section 11.004. DUTY OF RECORDER. (a) A county clerk shall:

"(1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved or acknowledged according to law;

"(2) give a receipt, as required by law, for an instrument delivered for recording;

"(3) record instruments relating to the same property in the order the instruments are filed; and

"(4) provide and keep in the clerk's office the indexes required by law.

"(b) A county clerk who violates a provision of this section and the sureties on the clerk's bond are liable for damages and, on

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motion in district court and after three days' notice to the clerk, for a civil penalty of not more than \$500, half of which is payable to the county and half to the person who files the motion. (V.A.C.S. Arts. 6633 (part), 6652.)

"Section 11.005. JUDGMENT PROVING AN INSTRUMENT OR CORRECTING A CERTIFICATE. (a) A person interested under an instrument that may be proved for record may bring an action in district court for a judgment proving the instrument.

"(b) A person interested under a defectively certified instrument for which acknowledgement or proof of execution has been properly made may bring an action in district court for a judgment correcting the certificate.

"(c) If a certified copy of a judgment in a suit under this section that shows proof of an instrument is attached to the instrument, the instrument may be recorded with the same effect as if it were acknowledged. (V.A.C.S. Arts. 6655, 6656, 6657.)

"Section 11.006. INSTRUMENT AFFECTING TITLE TO LAND IN ARCHER COUNTY. An instrument that in any manner affects title to land in Archer County, Texas, but was recorded in Jack County on or after August 10, 1866, but no later than August 10, 1870, and was made under the hand and seal of the county clerk of Shackelford County, is admissible in evidence in any suit in which secondary evidence is admissible. (V.A.C.S. Art. 6658.)

"CHAPTER 12. RECORDING OF INSTRUMENTS

"Section 12.001. INSTRUMENTS CONCERNING PROPERTY

"Section 12.002. SUBDIVISION PLAT

**"Section 12.003. INSTRUMENT IN GENERAL LAND OFFICE OR
ARCHIVES**

"Section 12.004. FOREIGN DEED

"Section 12.005. PARTITION

"Section 12.006. GRANT FROM GOVERNMENT

"Section 12.007. LIS PENDENS

"Section 12.008. CANCELLATION OF LIS PENDENS

"Section 12.009. MORTGAGE OR DEED OF TRUST MASTER FORM

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"Section 12.010. FEDERAL LIEN

"Section 12.011. CERTIFICATE OF REDEMPTION

"Section 12.012. ATTACHMENT

"Section 12.013. JUDGMENT

"Section 12.014. TRANSFER OF JUDGMENT OR CAUSE OF ACTION

"Section 12.015. JUDGMENT IN JUSTICE COURT

"Section 12.016. POWER OF ATTORNEY

"CHAPTER 12. RECORDING OF INSTRUMENTS

"Section 12.001. INSTRUMENTS CONCERNING PROPERTY. (a) An instrument concerning real or personal property may be recorded if it has been acknowledged or proved according to law.

"(b) An instrument conveying real property may not be recorded unless it is signed and acknowledged by the grantor in the presence of two or more credible subscribing witnesses or acknowledged before and certified by an officer authorized to take acknowledgements.

"(c) This section does not require the acknowledgement or prohibit the recording of a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code. (V.A.C.S. Arts. 1294, 6626, Sec. (a) (part).)

"Section 12.002. SUBDIVISION PLAT. (a) A map or plat of a subdivision or resubdivision of real property may not be recorded unless it is authorized by the appropriate county or city.

"(b) If the real property is located five miles or more outside the corporate limits of a city or town, the commissioners court of the county in which the land is located must authorize the map or plat by order duly entered in the minutes of the court.

"(c) If the real property is located in or within five miles of the corporate limits of a city or town, the governing body or planning commission of the municipality must authorize the map or plat as provided by Chapter 231, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 974a, Vernon's Texas Civil Statutes).

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"(d) This section does not apply to a partition by a court.
(V.A.C.S. Art. 6626, Sec. (a) (part).)

"Section 12.003. INSTRUMENT IN GENERAL LAND OFFICE OR ARCHIVES. (a) If written evidence of title to land has been filed according to law in the General Land Office or is in the public archives, a copy of the written evidence may be recorded if:

"(1) the original was properly executed under the law in effect at the time of execution; and

"(2) the copy is certified by the officer having custody of the original and attested with the seal of the General Land Office.

"(b) A court may not admit a title to land that was filed in the General Land Office as evidence of superior title against a location or survey of the same land that was made under a valid land warrant or certificate prior to the filing of the title in the General Land Office unless prior to the location or survey:

"(1) the older title had been recorded with the county clerk of the county in which the land is located; or

"(2) the person who had the location or survey made had actual notice of the older title. (V.A.C.S. Arts. 6625, 6628, 6634.)

"Section 12.004. FOREIGN DEED. If written evidence of title to land has been filed outside the county in which the land is located or outside the state, a copy of the written evidence may be recorded in the county in which the land is located if:

"(1) the original was properly executed and recorded under the law governing the recording; and

"(2) the copy is certified by the officer having legal custody of the original. (V.A.C.S. Art. 6625a.)

"Section 12.005. PARTITION. (a) A court order partitioning or allowing recovery of title to land must be recorded with the county clerk of the county in which the land is located in order to be admitted as evidence to support a right claimed under the order.

"(b) A record of an order is sufficient under this section if it consists of a brief statement by the clerk of the court that made the order, signed and sealed by the clerk, that includes:

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"(1) the identity of the case in which the partition or judgment was made;

"(2) the date of the case;

"(3) the names of the parties to the case;

"(4) a description of the land involved that is located in the county of the recording; and

"(5) the name of the party to whom the land is decreed.
(V.A.C.S. Arts. 6638, 6639.)

"Section 12.006. GRANT FROM GOVERNMENT. A grant from this state or the United States that is executed and authenticated under the law in effect at the time the grant is made may be recorded without further acknowledgement or proof. (V.A.C.S. Art. 6624.)

"Section 12.007. LIS PENDENS. (a) After the plaintiff's statement in an eminent domain proceeding is filed or during the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending.

"(b) The party filing a lis pendens or the party's agent or attorney shall sign the lis pendens, which must state:

"(1) the style and number, if any, of the proceeding;

"(2) the court in which the proceeding is pending;

"(3) the names of the parties;

"(4) the kind of proceeding; and

"(5) a description of the property affected.

"(c) The county clerk shall record the notice in a lis pendens record. The clerk shall index the record in a direct and reverse index under the name of each party to the proceeding.
(V.A.C.S. Arts 6640, 6641.)

"Section 12.008. CANCELLATION OF LIS PENDENS. (a) On the motion of a party or other person interested in the result of or in property affected by a proceeding in which a lis pendens has been

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recorded and after notice to each affected party, the court hearing the action may cancel the lis pendens at any time during the proceeding, whether in term time or vacation, if the court determines that the party seeking affirmative relief can be adequately protected by the deposit of money into court or by the giving of an undertaking.

"(b) If the cancellation of a lis pendens is conditioned on the payment of money, the court may order the cancellation when the party seeking the cancellation pays into the court an amount equal to the total of:

"(1) the judgment sought;

"(2) the interest the court considers likely to accrue during the proceeding; and

"(3) costs.

"(c) If the cancellation of a lis pendens is conditioned on the giving of an undertaking, the court may order the cancellation when the party seeking the cancellation gives a guarantee of payment of a judgment, plus interest and costs, in favor of the party who recorded the lis pendens. The guarantee must equal twice the amount of the judgment sought and have two sufficient sureties approved by the court. Not less than two days before the day the guarantee is submitted to the court for approval, the party seeking the cancellation shall serve the attorney for the party who recorded the lis pendens a copy of the guarantee and notice of its submission to the court. (V.A.C.S. Art. 6643a.)

"Section 12.009. MORTGAGE OR DEED OF TRUST MASTER FORM. (a) A master form of a mortgage or deed of trust may be recorded in any county without acknowledgement or proof. The master form must contain on its face the designation: 'Master form recorded by (name of person causing the recording).'

"(b) The county clerk shall index a master form under the name of the person causing the recording and indicate in the index and records that the document is a master mortgage.

"(c) The parties to an instrument may incorporate by reference a provision of a recorded master form with the same

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effect as if the provision were set out in full in the instrument.

The reference must state:

"(1) that the master form is recorded in the county in which the instrument is offered for record;

"(2) the numbers of the book or volume and first page of the records in which the master form is recorded; and

"(3) a definite identification of each provision being incorporated.

"(d) If a mortgage or deed of trust incorporates by reference a provision of a master form, the mortgagee shall give the mortgagor a copy of the master form at the time the instrument is executed. A statement in the mortgage or deed of trust or in a separate instrument signed by the mortgagor that the mortgagor received a copy of the master form is conclusive evidence of its receipt. On written request the mortgagee shall give a copy of the master form without charge to the mortgagor, the mortgagor's successors in interest, or the mortgagor's or a successor's agent.

"(e) The provisions of the Uniform Commercial Code prevail over this section. (V.A.C.S. Art. 6626b.)

"Section 12.010. FEDERAL LIEN. (a) A notice, abstract, or statement of a lien or claim in favor of the United States or a release or discharge of the lien or claim may be recorded if the instrument has been prepared according to the laws of the United States.

"(b) The county clerk shall number an instrument filed under this section in the order it is filed, record it in the Federal Lien Record, and index it alphabetically in the Index to Federal Liens under the name of each person named in or affected by the instrument.

"(c) Failure of a county clerk to properly record or index an instrument relating to a lien or claim of the United States or nonpayment of a filing fee does not affect the validity of the lien, claim, release, or discharge. (V.A.C.S. Art. 6644.)

"Section 12.011. CERTIFICATE OF REDEMPTION. An instrument issued by the United States that redeems or evidences redemption of

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real property from a judicial sale or from a nonjudicial sale under foreclosure of a lien, mortgage, or deed of trust may be recorded in records of conveyances in each county in which the property is located if the instrument has been issued according to the laws of the United States. (V.A.C.S. Art. 6644a.)

"Section 12.012. ATTACHMENT. (a) If an officer files a writ of attachment on real property with a county clerk, the clerk shall record the name of each plaintiff and defendant in attachment, the amount of the debt, and the officer's return in full.

"(b) A county clerk who receives a certified copy of an order quashing or vacating a writ of attachment shall record the order and the name of each plaintiff and defendant. (V.A.C.S. Art. 6662 (part).)

"Section 12.013. JUDGMENT. A judgment or an abstract of a judgment of a court in this state may be recorded if the judgment is attested under the signature and seal of the clerk of the court that rendered the judgment. (V.A.C.S. Art. 6635.)

"Section 12.014. TRANSFER OF JUDGMENT OR CAUSE OF ACTION.

(a) A judgment or part of a judgment of a court of record or an interest in a cause of action on which suit has been filed may be sold, regardless of whether the judgment or cause of action is assignable in law or equity, if the transfer is in writing.

"(b) A transfer under this section may be filed with the papers of the suit if the transfer is acknowledged in the form and manner required by law for acknowledgement of deeds.

"(c) If a transfer of a judgment is filed, the clerk shall note the transfer on the margin of the minute book at the place where the judgment is recorded. If a transfer of a cause of action in which a judgment has not been rendered is filed, the clerk shall note and briefly state the substance of the transfer on the court docket at the place where the suit is entered.

"(d) A transfer filed under this section is notice to and is binding on a person subsequently dealing with the judgment or cause of action. (V.A.C.S. Art. 6636.)

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"Section 12.015. JUDGMENT IN JUSTICE COURT. (a) On the application of a party interested in land that has been sold under an execution issued by a justice court, the justice of the peace having custody of the execution and the judgment under which it was issued shall make a certified transcript of the judgment, the execution, and the levy and return of the executing officer.

"(b) A certified transcript under this section may be recorded in the same manner as a deed. (V.A.C.S. Art. 6637 (part).)

"Section 12.016. POWER OF ATTORNEY. A power of attorney may be recorded. (V.A.C.S. Art. 6633 (part).)

"CHAPTER 13. EFFECTS OF RECORDING

"Section 13.001. VALIDITY OF UNRECORDED INSTRUMENT

"Section 13.002. EFFECT OF RECORDED INSTRUMENT

"Section 13.003. INSTRUMENTS PREVIOUSLY RECORDED IN OTHER
COUNTIES

"Section 13.004. EFFECT OF RECORDING LIS PENDENS

"Section 13.005. EFFECT OF RECORDING JUDGMENT OF JUSTICE COURT

"CHAPTER 13. EFFECTS OF RECORDING

"Section 13.001. VALIDITY OF UNRECORDED INSTRUMENT. (a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged or proved and filed for record as required by law.

"(b) The unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

"(c) This section does not apply to a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code. (V.A.C.S. Arts. 1289, 6627.)

"Section 13.002. EFFECT OF RECORDED INSTRUMENT. An instrument that is properly recorded in the proper county is notice

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to all persons of the existence of the instrument. (V.A.C.S. Art. 6646.)

"Section 13.003. INSTRUMENTS PREVIOUSLY RECORDED IN OTHER COUNTIES. The original or a certified copy of a conveyance, covenant, agreement, deed of trust, or mortgage, relating to land, that has been recorded in a county of this state other than the county where the land to which the instrument relates is located, is valid as to a creditor or a subsequent purchaser who has paid a valuable consideration and who does not have notice of the instrument only after it is recorded in the county in which the land is located. Recording a previously recorded instrument in the proper county does not validate an invalid instrument. (V.A.C.S. Art. 6631.)

"Section 13.004. EFFECT OF RECORDING LIS PENDENS. (a) A recorded lis pendens is notice to the world of its contents. The notice is effective from the time it is filed for record, regardless of whether service has been made on the parties to the proceeding.

"(b) A transfer or encumbrance of real property involved in a proceeding by a party to the proceeding to a third party who has paid a valuable consideration and who does not have actual or constructive notice of the proceeding is effective, even though the judgment is against the party transferring or encumbering the property, unless a notice of the pendency of the proceeding has been recorded under that party's name in each county in which the property is located. (V.A.C.S. Arts. 6642, 6643.)

"Section 13.005. EFFECT OF RECORDING JUDGMENT OF JUSTICE COURT. A certified transcript of a justice court judgment recorded under Section 12.015 of this code has the same effect as a recorded deed. A court shall admit as evidence the transcript or a copy of the transcript, if the copy is certified with the signature and seal of the clerk of the county in which the transcript is recorded, in the same manner and with the same effect as the original judgment and execution. (V.A.C.S. Art. 6637 (part).)

"[Chapters 14-20 reserved for expansion]

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"TITLE 4. ACTIONS AND REMEDIES**"CHAPTER 21. EMINENT DOMAIN****"SUBCHAPTER A. JURISDICTION****"Section 21.001. CONCURRENT JURISDICTION****"Section 21.002. TRANSFER OF CASES****"Section 21.003. DISTRICT COURT AUTHORITY****"[Sections 21.004-21.010 reserved for expansion]****"SUBCHAPTER B. PROCEDURE****"Section 21.011. STANDARD PROCEDURE****"Section 21.012. CONDEMNATION PETITION****"Section 21.013. VENUE****"Section 21.014. SPECIAL COMMISSIONERS****"Section 21.015. HEARING****"Section 21.016. NOTICE****"Section 21.017. ALTERNATIVE PLEADINGS****"Section 21.018. APPEAL FROM COMMISSIONERS' FINDINGS****"Section 21.019. DISMISSAL OF CONDEMNATION PROCEEDINGS****"Section 21.020. REINSTATEMENT OF CONDEMNATION PROCEEDINGS****"Section 21.021. POSSESSION PENDING LITIGATION****"Section 21.022. AUTHORITY OF COURTS****"[Sections 21.023-21.040 reserved for expansion]****"SUBCHAPTER C. DAMAGES AND COSTS****"Section 21.041. EVIDENCE****"Section 21.042. ASSESSMENT OF DAMAGES****"Section 21.043. DISPLACEMENT FROM DWELLING OR PLACE OF BUSINESS****"Section 21.044. DAMAGES FROM TEMPORARY POSSESSION****"Section 21.045. TITLE ACQUIRED****"Section 21.046. RELOCATION ASSISTANCE PROGRAM****"Section 21.047. ASSESSMENT OF COSTS****"Section 21.048. STATEMENT OF DAMAGES AND COSTS****"[Sections 21.049-21.060 reserved for expansion]****"SUBCHAPTER D. JUDGMENT****"Section 21.061. JUDGMENT ON COMMISSIONERS' FINDINGS****"Section 21.062. WRIT OF POSSESSION**Additions in text indicated by underline; deletions by ~~strikeouts~~

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"Section 21.063. APPEAL

"Section 21.064. INJUNCTIVE RELIEF

"Section 21.065. VESTED INTEREST

"TITLE 4. ACTIONS AND REMEDIES

"CHAPTER 21. EMINENT DOMAIN

"SUBCHAPTER A. JURISDICTION

"Section 21.001. CONCURRENT JURISDICTION. District courts and county courts at law have concurrent jurisdiction in eminent domain cases. A county court has no jurisdiction in eminent domain cases. (V.A.C.S. Art. 3266a, Sec. 1.)

"Section 21.002. TRANSFER OF CASES. If an eminent domain case is pending in a county court at law and the court determines that the case involves an issue of title or any other matter that cannot be fully adjudicated in that court, the judge shall transfer the case to a district court. (V.A.C.S. Art. 3266a, Sec. 4.)

"Section 21.003. DISTRICT COURT AUTHORITY. A district court may determine all issues, including the authority to condemn property and the assessment of damages in any suit:

"(1) in which this state, a political subdivision of this state, a person, an association of persons, or a corporation is a party; and

"(2) that involves a claim for property or for damages to property occupied by the party under the party's eminent domain authority or for an injunction to prevent the party from entering or using the property under the party's eminent domain authority. (V.A.C.S. Art. 3269 (part).)

"[Sections 21.004-21.010 reserved for expansion]

"SUBCHAPTER B. PROCEDURE

"Section 21.011. STANDARD PROCEDURE. Exercise of the eminent domain authority in all cases is governed by Sections 21.012 through 21.016 of this code. (V.A.C.S. Art. 3264 (part).)

"Section 21.012. CONDEMNATION PETITION. (a) If the United States, this state, a political subdivision of this state, a corporation with eminent domain authority, or an irrigation, water

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improvement, or water power control district created by law wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the condemning entity may begin a condemnation proceeding by filing a petition in the proper court.

"(b) The petition must:

"(1) describe the property to be condemned;

"(2) state the purpose for which the entity intends to use the property;

"(3) state the name of the owner of the property if the owner is known; and

"(4) state that the entity and the property owner are unable to agree on the damages. (V.A.C.S. Art. 3264 (part).)

"Section 21.013. VENUE. (a) The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located.

"(b) Except where otherwise provided by law, a party initiating a condemnation proceeding in a county in which there is one county court at law with jurisdiction must file the petition with the judge of that court or, if there is more than one county court at law with jurisdiction, with the county clerk.

"(c) A party initiating a condemnation proceeding in a county in which there is not a county court at law with jurisdiction must file the condemnation petition with the district judge or, if there is more than one district court in the county, with the district clerk.

"(d) District and county clerks shall assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the clerk serves. (V.A.C.S. Art. 3264 (part); Art. 3266a, Secs. 2 (part), 3 (part), 5(a) (part), 5(b) (part).)

"Section 21.014. SPECIAL COMMISSIONERS. (a) The judge of a court in which a condemnation petition is filed or to which an

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eminent domain case is assigned shall appoint three disinterested freeholders who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. The judge appointing the special commissioners shall give preference to persons agreed on by the parties. If a person fails to serve as a commissioner, the judge may appoint a replacement.

"(b) The special commissioners shall swear to assess damages fairly, impartially, and according to the law.

"(c) Special commissioners may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt in the same manner as a county judge. (V.A.C.S. Art. 3264 (part); Art. 3266, Par. 2.)

"Section 21.015. HEARING. (a) The special commissioners in an eminent domain proceeding shall promptly schedule a hearing for the parties at the earliest practical time and at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

"(b) After notice of the hearing has been served, the special commissioners shall hear the parties at the scheduled time and place or at any other time or place to which they may adjourn the hearing. (V.A.C.S. Art. 3264 (part).)

"Section 21.016. NOTICE. (a) Each party in an eminent domain proceeding is entitled to written notice issued by the special commissioners informing the party of the time and place of the hearing.

"(b) Notice of the hearing must be served on a party not later than the 11th day before the day set for the hearing. A person competent to testify may serve the notice.

"(c) A person who serves a notice shall return the original notice to the special commissioners on or before the day set for hearing. The person shall write a return of service on the notice that states how and when it was served.

"(d) Notice may be served:

"(1) by delivering a copy of the notice to the party or to the party's agent or attorney;

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"(2) if the property being condemned belongs to a deceased's estate or to a minor or other legally disabled person and the person or estate has a legal representative, by delivering a copy of the notice to the legal representative; or

"(3) if the property being condemned belongs to a nonresident of this state and there has been no personal service on the owner, if the identity or the residence of the property owner is unknown, or if the property owner avoids service of notice by hiding, by publication in the same manner as service of citation by publication in other civil cases in the district courts or county courts at law. (V.A.C.S. Art. 3264 (part).)

"Section 21.017. ALTERNATIVE PLEADINGS. (a) This state, a political subdivision of this state, a person, an association of persons, or a corporation that is a party to a suit covered by Section 21.003 of this code by petition, cross-bill, or plea of intervention may assert a claim to the property or, alternatively, seek to condemn the property.

"(b) A plea under this section is not an admission of an adverse party's title to the property in controversy. (V.A.C.S. Art. 3269 (part).)

"Section 21.018. APPEAL FROM COMMISSIONERS' FINDINGS. (a) A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court.

"(b) If a party files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil causes. (V.A.C.S. Art. 3266, Par. 6; Art. 3266a, Secs. 2 (part), 3 (part), 5(a) (part), 5(b) (part).)

"Section 21.019. DISMISSAL OF CONDEMNATION PROCEEDINGS. (a) A party that files a condemnation petition may move to dismiss the

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proceedings, and the court shall conduct a hearing on the motion. However, after the special commissioners have made an award, in an effort to obtain a lower award a condemnor may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner.

"(b) A court that hears a motion to dismiss a condemnation proceeding shall make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing. (V.A.C.S. Art. 3265, Par. 6 (part).)

"Section 21.020. REINSTATEMENT OF CONDEMNATION PROCEEDINGS. If a condemnor moves to dismiss a condemnation proceeding and subsequently files a petition to condemn substantially the same property interest from the same property owner, the court may not appoint new special commissioners but shall enter the award of the special commissioners in the first proceeding as the award in the second. The court shall award the property owner triple the amount of the expenses that were allowed the property owner prior to the dismissal of the first proceeding. (V.A.C.S. Art. 3265, Par. 6 (part).)

"Section 21.021. POSSESSION PENDING LITIGATION. (a) After the special commissioners have made an award in a condemnation proceeding, except as provided by Subsection (c) of this section, the condemnor may take possession of the condemned property pending the results of further litigation if the condemnor:

"(1) pays to the property owner the amount of damages and costs awarded by the special commissioners or deposits that amount of money with the court subject to the order of the property owner;

"(2) deposits with the court either the amount of money awarded by the special commissioners as damages or a surety bond in the same amount issued by a surety company qualified to do business

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in this state, conditioned to secure the payment of an award of damages by the court in excess of the award of the special commissioners; and

"(3) executes a bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to secure the payment of additional costs that may be awarded to the property owner by the trial court or on appeal.

"(b) A court shall hold money or a bond deposited under Subdivision (1) or (2) of Subsection (a) to secure the payment of the damages that have been or that may be awarded against the condemnor.

"(c) This state, a county, or a municipal corporation or an irrigation, water improvement, or water power control district created under legal authority is not required to deposit a bond or the amount equal to the award of damages under Subdivisions (1) and (2) of Subsection (a).

"(d) If a condemnor deposits money with a court under Subdivision (2) of Subsection (a), the condemnor may instruct the court to deposit or invest the money in any account with or certificate or security issued by a state or national bank in this state. The court shall pay the interest that accrues from the deposit or investment to the condemnor. (V.A.C.S. Art. 3268 (part).)

"Section 21.022. AUTHORITY OF COURTS. Laws that formerly governed the performance of functions by county clerks and judges in eminent domain proceedings are applicable to the clerks and judges of district courts and county courts at law. (V.A.C.S. Art. 3266, Par. 8.)

"[Sections 21.023-21.040 reserved for expansion]

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"SUBCHAPTER C. DAMAGES AND COSTS

"Section 21.041. EVIDENCE. As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on:

- "(1) the value of the property being condemned;
- "(2) the injury to the property owner;
- "(3) the benefit to the property owner's remaining property;

and

"(4) the use of the property for the purpose of the condemnation. (V.A.C.S. Art. 3265, Par. 1 (part).)

"Section 21.042. ASSESSMENT OF DAMAGES. (a) The special commissioners shall assess damages in a condemnation proceeding according to the evidence presented at the hearing.

"(b) If an entire tract or parcel of real property is condemned, the damage to the property owner is the local market value of the property at the time of the special commissioners' hearing.

"(c) If a portion of a tract or parcel of real property is condemned, the special commissioners shall determine the damage to the property owner after estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation on the value of the property owner's remaining property.

"(d) In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, but they may not consider an injury or benefit that the property owner experiences in common with the general community. (V.A.C.S. Art. 3265, Pars. 1 (part), 2, 3, 4.)

"Section 21.043. DISPLACEMENT FROM DWELLING OR PLACE OF BUSINESS. (a) A property owner who is permanently physically displaced from the property owner's dwelling or place of business and who is not entitled to reimbursement for moving expenses under

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another law may recover, in addition to the property owner's other damages, the reasonable expenses of moving the property owner's personal property from the dwelling or place of business.

"(b) A recovery under this section may not exceed the market value of the property being moved. The maximum distance of movement to be considered is 50 miles. (V.A.C.S. Art. 3265, Par. 7.)

"Section 21.044. DAMAGES FROM TEMPORARY POSSESSION. (a) If a court finally determines that a condemnor who has taken possession of property pending litigation did not have the right to condemn the property, the court may award to the property owner the damages that resulted from the temporary possession.

"(b) The court may order the payment of damages awarded under this section from the award or other money deposited with the court. However, if the award paid to or appropriated by the property owner exceeds the court's final determination of the value of the property, the court shall order the property owner to return the excess to the condemnor. (V.A.C.S. Art. 3268 (part).)

"Section 21.045. TITLE ACQUIRED. Except where otherwise expressly provided by law, the interest acquired by a condemnor under this chapter does not include the fee simple title to real property, either public or private. An interest acquired by a condemnor is not lost by the forfeiture or expiration of the condemnor's charter and is subject to an extension of the charter or the grant of a new charter without a new condemnation. (V.A.C.S. Art. 3270.)

"Section 21.046. RELOCATION ASSISTANCE PROGRAM. (a) A department, agency, instrumentality, or political subdivision of this state may provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization if the service is compatible with the Federal Uniform Relocation Assistance Advisory Program, 23 U.S.C.A. 501, et seq.

"(b) This state or a political subdivision of this state may, as a cost of acquiring real property, pay moving expenses and

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rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

"(c) A department, agency, instrumentality, or political subdivision of this state that initiates a program under Subsection (b) shall adopt rules relating to the administration of the program.

"(d) Neither this state nor a political subdivision of this state may authorize expenditures under Subsection (b) that exceed payments authorized under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq.

"(e) If a person moves or discontinues the person's business, moves personal property, or moves from the person's dwelling as a direct result of code enforcement, rehabilitation, or a demolition program, the person is considered to be displaced because of the acquisition of real property. (V.A.C.S. Art. 3266b, Secs. 1, 1A, 2.)

"Section 21.047. ASSESSMENT OF COSTS. (a) Special commissioners may adjudge the costs of an eminent domain proceeding against any party. If the commissioners award greater damages than the condemnor offered to pay before the proceedings began or if the decision of the commissioners is appealed and a court awards greater damages than the commissioners awarded, the condemnor shall pay all costs. If the commissioners' award or the court's determination of the damages is less than or equal to the amount the condemnor offered before proceedings began, the property owner shall pay the costs.

"(b) A condemnor shall pay the initial cost of serving a property owner with notice of a condemnation proceeding. If the property owner is ordered to pay the costs of the proceeding, the

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condemnor may recover the expense of notice from the property owner as part of the costs.

"(c) A court that has jurisdiction of an eminent domain proceeding may tax \$10 or more as a reasonable fee for each special commissioner as part of the court costs of the proceeding. (V.A.C.S. Art. 3266, Pars. 3 (part), 4, 5 (part); Art. 3267.)

"Section 21.048. STATEMENT OF DAMAGES AND COSTS. After the special commissioners in an eminent domain proceeding have assessed the damages, they shall:

"(1) make a written statement of their decision stating the damages, date it, sign it, and promptly file it and all other papers connected with the proceeding with the court; and

"(2) make and sign a written statement of the accrued costs of the proceeding, naming the party against whom the costs are adjudged, and file the statement with the court. (V.A.C.S. Art. 3265, Par. 5; Art. 3266, Par. 5 (part).)

"[Sections 21.049-21.060 reserved for expansion]

"SUBCHAPTER D. JUDGMENT

"Section 21.061. JUDGMENT ON COMMISSIONERS' FINDINGS. If no party in a condemnation proceeding files timely objections to the findings of the special commissioners, the judge of the court that has jurisdiction of the proceeding shall adopt the commissioners' findings as the judgment of the court, record the judgment in the minutes of the court, and issue the process necessary to enforce the judgment. (V.A.C.S. Art. 3266, Par. 7.)

"Section 21.062. WRIT OF POSSESSION. If a condemnor in a condemnation proceeding has taken possession of property pending litigation and the court finally decides that the condemnor does not have the right to condemn the property, the court shall order the condemnor to surrender possession of the property and issue a writ of possession to the property owner. (V.A.C.S. Art. 3268 (part).)

"Section 21.063. APPEAL. (a) The appeal of a judgment in a condemnation proceeding is as in other civil cases.

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"(b) A court hearing an appeal from the decision of a trial court in a condemnation proceeding may not suspend the judgment of the trial court pending the appeal. (V.A.C.S. Art. 3268 (part).)

"Section 21.064. INJUNCTIVE RELIEF. (a) A court hearing a suit covered by Section 21.003 of this code may grant injunctive relief under the rules of equity.

"(b) Instead of granting an injunction under this section, a court may require a condemnor to provide security adequate to compensate the property owner for damages that might result from the condemnation. (V.A.C.S. Art. 3269 (part).)

"Section 21.065. VESTED INTEREST. A judgment of a court under this chapter vests a right granted to a condemnor. (V.A.C.S. Art. 3271.)

"CHAPTER 22. TRESPASS TO TRY TITLE

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 22.001. TRESPASS TO TRY TITLE

"Section 22.002. TITLE SUFFICIENT TO MAINTAIN ACTION

"Section 22.003. FINAL JUDGMENT CONCLUSIVE

"Section 22.004. EFFECT OF FORMER LAW

"[Sections 22.005-22.020 reserved for expansion]

"SUBCHAPTER B. JUDGMENT AND DAMAGES

"Section 22.021. CLAIM FOR IMPROVEMENTS

"Section 22.022. WRIT OF POSSESSION

"Section 22.023. FAILURE TO PAY

"Section 22.024. PAYMENTS INTO COURT

"[Sections 22.025-22.040 reserved for expansion]

"SUBCHAPTER C. REMOVAL OF IMPROVEMENTS

"Section 22.041. PLEA FOR REMOVAL OF IMPROVEMENTS

"Section 22.042. REFEREE

"Section 22.043. RETAINED JURISDICTION

"Section 22.044. CONDITION FOR REMOVAL

"Section 22.045. CUMULATIVE REMEDIES

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"CHAPTER 22. TRESPASS TO TRY TITLE

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 22.001. TRESPASS TO TRY TITLE. (a) A trespass to try title action is the method of determining title to lands, tenements, or other real property.

"(b) The action of ejectment is not available in this state. (V.A.C.S. Art. 7364.)

"Section 22.002. TITLE SUFFICIENT TO MAINTAIN ACTION. A headright certificate, land scrip, bounty warrant, or other evidence of legal right to located and surveyed land is sufficient title to maintain a trespass to try title action. (V.A.C.S. Art. 7375.)

"Section 22.003. FINAL JUDGMENT CONCLUSIVE. A final judgment that establishes title or right to possession in an action to recover real property is conclusive against the party from whom the property is recovered and against a person claiming the property through that party by a title that arises after the action is initiated. (V.A.C.S. Art. 7391.)

"Section 22.004. EFFECT OF FORMER LAW. This chapter does not affect rights that existed before the introduction of the common law in this state. Those rights are defined by the principles of the law in effect at the time the rights accrued. (V.A.C.S. Art. 7392.)

"[Sections 22.005-22.020 reserved for expansion]

"SUBCHAPTER B. JUDGMENT AND DAMAGES

"Section 22.021. CLAIM FOR IMPROVEMENTS. (a) A defendant in a trespass to try title action who is not the rightful owner of the property, but who has possessed the property in good faith and made permanent and valuable improvements to it, is either:

"(1) entitled to recover the amount by which the estimated value of the defendant's improvements exceeds the estimated value of the defendant's use and occupation of and waste or other injury to the property; or

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"(2) liable for the amount by which the value of the use and occupation of and waste and other injury to the property exceeds the value of the improvements and for costs.

"(b) In estimating values of improvements or of use and occupation:

"(1) improvements are valued at the time of trial, but only to the extent that the improvements increased the value of the property; and

"(2) use and occupation is valued for the time before the date the action was filed that the defendant was in possession of the property, but excluding the value resulting from the improvements made by the defendant or those under whom the defendant claims.

"(c) The defendant who makes a claim for improvements must plead:

"(1) that the defendant and those under whom the defendant claims have had good faith adverse possession of the property in controversy for at least one year before the date the action began;

"(2) that they or the defendant made permanent and valuable improvements to the property while in possession;

"(3) the grounds for the claim;

"(4) the identity of the improvements; and

"(5) the value of each improvement.

"(d) The defendant is not liable for damages under this section for injuries or for the value of the use and occupation more than two years before the date the action was filed, and the defendant is not liable for damages or for the value of the use and occupation in excess of the value of the improvements. (V.A.C.S. Arts. 7389 (part), 7393, 7394, 7395, 7396.)

"Section 22.022. WRIT OF POSSESSION. If in a trespass to try title action the plaintiff obtains a judgment for the contested property, but the defendant obtains a judgment for the value of the defendant's improvements in excess of the defendant's liability for use, occupation, and damages, the court may not issue a writ of

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possession until the first anniversary of the judgment unless the plaintiff pays to the clerk of the court for the benefit of the defendant the amount of the judgment in favor of the defendant plus interest. (V.A.C.S. Art. 7397.)

"Section 22.023. FAILURE TO PAY. (a) If after a trespass to try title action a plaintiff does not pay a judgment awarded to a defendant, plus accrued interest, before the first anniversary of the judgment and if the defendant, before the sixth month after the first anniversary of the judgment, pays the value of the property, less the value of the defendant's improvements, to the clerk of the court for the benefit of the plaintiff, the plaintiff may not obtain a writ of possession or maintain any proceeding against the defendant or the defendant's heirs or assigns for the property awarded to the plaintiff in the trespass to try title action.

"(b) If an eligible defendant does not exercise the option under this section, a plaintiff may apply for a writ of possession as in other cases. (V.A.C.S. Arts. 7398, 7399.)

"Section 22.024. PAYMENTS INTO COURT. If a party in a trespass to try title action makes a payment to the clerk of a court under this subchapter, the clerk shall enter a dated memorandum of the payment on the page of the record on which the judgment was entered. The clerk shall pay the money on demand to the person entitled to the payment, who shall indicate receipt of the payment by dating and signing the record on the same page on which the judgment was entered. (V.A.C.S. Art. 7401.)

"[Sections 22.025-22.040 reserved for expansion]

"SUBCHAPTER C. REMOVAL OF IMPROVEMENTS

"Section 22.041. PLEA FOR REMOVAL OF IMPROVEMENTS. (a) A defendant in a trespass to try title action who is not the rightful owner of the property in controversy may remove improvements made to the property if:

"(1) the defendant, and those under whom the defendant claims, possessed the property, and made permanent and valuable improvements to it, without intent to defraud and

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"(2) the improvements can be removed without substantial and permanent damage to the property.

"(b) The pleadings of a defendant who seeks to remove improvements must contain:

"(1) a statement that the defendant, and those under whom the defendant claims, adversely possessed the property, and made permanent and valuable improvements to it, without intent to defraud;

"(2) a statement identifying the improvements; and

"(3) an offer to provide a surety bond in an amount and conditioned as required by this section.

"(c) Before removing the improvements, the defendant must post a surety bond in an amount determined by the court, conditioned on the removal of the improvements in a manner that substantially restores the property to the condition it was in before the improvements were made. (V.A.C.S. Art. 7401A, Secs. 1, 2, 3 (part).)

"Section 22.042. REFEREE. A court that authorizes a defendant in a trespass to try title action to remove improvements shall appoint a referee to supervise the removal. The court may require the referee to make reports to the court concerning the removal. (V.A.C.S. Art. 7401A, Sec. 3 (part).)

"Section 22.043. RETAINED JURISDICTION. A court that authorizes a defendant in a trespass to try title action to remove improvements retains jurisdiction of the action until the court makes a final disposition of the case and a final determination of the rights, duties, and liabilities of the parties and sureties. (V.A.C.S. Art. 7401A, Sec. 3 (part).)

"Section 22.044. CONDITION FOR REMOVAL. Before a court in a trespass to try title action authorizes a defendant to remove improvements, the court may require the defendant to satisfy a money judgment in favor of the plaintiff that arises out of a claim of the plaintiff in the action. (V.A.C.S. Art. 7401A, Sec. 4.)

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"Section 22.045. CUMULATIVE REMEDIES. The remedy of removing improvements may be pleaded as an alternative to all other remedies at law or in equity. (V.A.C.S. Art. 7401A, Sec. 5.)

"CHAPTER 23. PARTITION

"Section 23.001. PARTITION

"Section 23.002. VENUE AND JURISDICTION

"Section 23.003. EFFECT ON FUTURE INTERESTS

"Section 23.004. EFFECT OF PARTITION

"Section 23.005. FEES

"CHAPTER 23. PARTITION

"Section 23.001. PARTITION. A joint owner or claimant of real property or an interest in real property or a joint owner of personal property may compel a partition of the interest or the property among the joint owners or claimants under this chapter and the Texas Rules of Civil Procedure. (V.A.C.S. Arts. 6082, 6101.)

"Section 23.002. VENUE AND JURISDICTION. (a) A joint owner or a claimant of real property or an interest in real property may bring an action to partition the property or interest in a district court of a county in which any part of the property is located.

"(b) A joint owner of personal property must bring an action to partition the property in a court that has jurisdiction over the value of the property. (V.A.C.S. Arts. 6083 (part), 6102 (part).)

"Section 23.003. EFFECT ON FUTURE INTERESTS. A partition of real property involving an owner of a life estate or an estate for years and other owners of equal or greater estates does not prejudice the rights of an owner of a reversion or remainder interest. (V.A.C.S. Art. 6098.)

"Section 23.004. EFFECT OF PARTITION. (a) A person allotted a share of or an interest in real property in a partition action holds the property or interest in severalty under the conditions and covenants that applied to the property prior to the partition.

"(b) A court decree confirming a report of commissioners in partition of real property gives a recipient of an interest in the

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property a title equivalent to a conveyance of the interest by a warranty deed from the other parties in the action.

"(c) Except as provided by this chapter, a partition of real property does not affect a right in the property. (V.A.C.S. Arts. 6099, 6100.)

"Section 23.005. FEES. A court that hears an action to partition real property shall pay each commissioner in partition and the surveyor, if any, \$3 a day for making and returning the partition. The court shall tax and collect this fee in the same manner as the other costs in the action. (V.A.C.S. Art. 6108.)

"CHAPTER 24. FORCIBLE ENTRY AND DETAINER

"Section 24.001. FORCIBLE ENTRY AND DETAINER

"Section 24.002. FORCIBLE DETAINER

"Section 24.003. SUBSTITUTION OF PARTIES

"Section 24.004. JURISDICTION

"Section 24.005. NOTICE TO VACATE FOR NONPAYMENT OF RENT

"Section 24.006. ATTORNEY'S FEES AND COSTS OF SUIT

"Section 24.007. APPEAL

"Section 24.008. EFFECT ON OTHER ACTIONS

"CHAPTER 24. FORCIBLE ENTRY AND DETAINER

"Section 24.001. FORCIBLE ENTRY AND DETAINER. (a) A person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force.

"(b) For the purposes of this chapter, a forcible entry is:

"(1) an entry without the consent of the person in actual possession of the property; or

"(2) as to a landlord, an entry onto property in the possession of the landlord's tenant at will or by sufferance, whether with or without the tenant's consent. (V.A.C.S. Arts. 3973 (part), 3974.)

"Section 24.002. FORCIBLE DETAINER. (a) A person who refuses to surrender possession of real property on demand commits a forcible detainer if the person:

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"(1) is a tenant or a subtenant wilfully and without force holding over after the expiration of the lease under which the person claimed;

"(2) is a tenant at will or by sufferance;

"(3) is a tenant of a person who acquired possession by forcible entry;

"(4) has made a forcible entry on the possession of a person who acquired possession by forcible entry; or

"(5) has made a forcible entry on the possession of a tenant whose term has expired.

"(b) The demand for possession must be made in writing by a person entitled to possession of the property. (V.A.C.S. Arts. 3973 (part), 3975 (part).)

"Section 24.003. SUBSTITUTION OF PARTIES. If a tenancy for a term expires while the tenant's action for forcible entry is pending, the landlord may prosecute the action in the tenant's name for the landlord's benefit and at the landlord's expense. It is immaterial whether the tenant received possession from the landlord or became a tenant after obtaining possession of the property. (V.A.C.S. Art. 3975 (part).)

"Section 24.004. JURISDICTION. A justice court in the precinct in which the real property is located has jurisdiction in forcible entry and detainer and forcible detainer actions. (V.A.C.S. Art. 3973 (part).)

"Section 24.005 NOTICE TO VACATE FOR NONPAYMENT OF RENT.
(a) If a tenancy is longer than from week to week, a landlord must give a tenant who defaults in the payment of rent at least three days' written notice to vacate the leased premises before the landlord files an action for forcible entry and detainer or forcible detainer, unless a landlord and a tenant contract otherwise in a written or an oral lease.

"(b) The notice shall be given in person or by mail at the leased premises. The notice period is calculated from the day on which the notice is delivered. (V.A.C.S. Art. 3975a.)

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"Section 24.006. ATTORNEY'S FEES AND COSTS OF SUIT. (a) To be eligible to recover attorney's fees and costs of suit in a forcible entry and detainer or a forcible detainer action, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must be sent by registered or certified mail at least 10 days before the date the action is filed.

"(b) The demand must state that if the tenant does not vacate the premises within 10 days and the landlord files an action, the court may enter a judgment against the tenant for the costs of suit and reasonable attorney's fees.

"(c) A prevailing landlord may recover:

"(1) reasonable attorney's fees, if the tenant does not vacate the premises before the court renders judgment; or

"(2) reasonable attorney's fees plus the costs of the suit if the tenant vacates the premises after the suit is filed but before judgment is rendered. (V.A.C.S. Art. 3975b.)

"Section 24.007. APPEAL. A final judgment of a county court in a forcible entry and detainer or a forcible detainer action may not be appealed unless the judgment awards damages greater than \$100. (V.A.C.S. Art. 3992.)

"Section 24.008. EFFECT ON OTHER ACTIONS. A forcible entry and detainer or a forcible detainer action does not bar an action for trespass, damages, waste, rent, or mesne profits. (V.A.C.S. Art. 3994.)

"CHAPTER 25. TRIAL OF RIGHT OF PROPERTY

"Section 25.001. JURISDICTION

"Section 25.002. DAMAGES

"CHAPTER 25. TRIAL OF RIGHT OF PROPERTY

"Section 25.001. JURISDICTION. A trial of the right of property is an action that applies only to personal property. A trial of the right of property must be tried in a court with jurisdiction of the amount in controversy. (V.A.C.S. Art. 7409.)

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"Section 25.002. DAMAGES. If a claimant in a trial of the right of property does not establish a right to the property, the court shall adjudge damages against the obligors in the claimant's bond equal to 10 percent of the lesser of:

"(1) the property's value; or

"(2) the amount claimed under the writ levied against the property. (V.A.C.S. Arts. 7417, 7418.)

"[Chapters 26-40 reserved for expansion]

"TITLE 5. LIENS AND EXEMPT PROPERTY

"SUBTITLE A. EXEMPT PROPERTY

"CHAPTER 41. HOMESTEAD

"SUBCHAPTER A. NATURE OF EXEMPTION

"Section 41.001. HOMESTEAD

"Section 41.002. HOMESTEAD AND SEPULCHER EXEMPTION

"[Sections 41.003-41.020 reserved for expansion]

"SUBCHAPTER B. DESIGNATION AND EXCESS

"Section 41.021. EFFECT OF HOMESTEAD DESIGNATION

"Section 41.022. VOLUNTARY DESIGNATION OF RURAL HOMESTEAD

"Section 41.023. NOTICE TO DESIGNATE

"Section 41.024. DESIGNATION BY HOMESTEAD CLAIMANT

AFTER NOTICE

"Section 41.025. DESIGNATION BY COMMISSIONERS

"Section 41.026. FORM AND EFFECT OF DESIGNATION BY
COMMISSIONERS

"Section 41.027. FEES AND EXPENSES

"Section 41.028. SHERIFF'S RETURN

"Section 41.029. SALE OF EXCESS

"Section 41.030. CHANGE OF DESIGNATION

"TITLE 5. LIENS AND EXEMPT PROPERTY

"SUBTITLE A. EXEMPT PROPERTY

"CHAPTER 41. HOMESTEAD

"SUBCHAPTER A. NATURE OF EXEMPTION

"Section 41.001. HOMESTEAD. (a) To be a homestead property must be used by a homestead claimant as a home or as a place to

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exercise the calling or business to provide for a family or a single adult who is not a member of a family. The homestead consists of:

"(1) one or more parcels of real property, including improvements, that is not in a city, town, or village and that totals not more than 200 acres for a family or not more than 100 acres for a single adult who is not a member of a family; or

"(2) one or more lots in a city, town, or village, having a total value of \$10,000, not including improvements, at the time the property is designated as a homestead.

"(b) Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead. (V.A.C.S. Art. 3833.)

"Section 41.002. HOMESTEAD AND SEPULCHER EXEMPTION. (a) A homestead and one or more lots held for use as a sepulcher of a family or a single adult who is not a member of a family are exempt from attachment, execution, and forced sale for the payment of debts, except for encumbrances properly fixed on the property.

"(b) The proceeds of a voluntary sale of a homestead are not subject to garnishment or forced sale before six months after the date of the sale.

"(c) The homestead exemption provided in this section does not apply if the debt is for:

"(1) all or part of the purchase money of the homestead;

"(2) taxes on the homestead; or

"(3) work and material used in constructing improvements on the homestead, if the work and material have been contracted for in writing and, in the case of a family homestead, if both spouses have given consent in the manner required by law for the conveyance of the homestead. (V.A.C.S. Arts. 3834, 3835, 3839.)

"[Sections 41.003-41.020 reserved for expansion]

"SUBCHAPTER B. DESIGNATION AND EXCESS

"Section 41.021. EFFECT OF HOMESTEAD DESIGNATION. (a) A designation of homestead by a defendant relinquishes the

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defendant's homestead right in real property owned by the defendant that is not included in the designation and is binding on the defendant and persons in privity with the defendant.

"(b) A court shall admit an original or a certified copy of the designation as evidence of its factual statements. (V.A.C.S. Art. 3849.)

"Section 41.022. VOLUNTARY DESIGNATION OF RURAL HOMESTEAD.

(a) If a family homestead that is not in a town or city is part of one or more tracts containing a total of more than 200 acres, the head of the family may voluntarily designate not more than 200 acres of the property as the homestead.

"(b) To designate property as a homestead, a person must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:

"(1) a description sufficient to identify the property designated;

"(2) a statement by the person who executed the instrument that the property is designated as the homestead of the person's family;

"(3) the name of the original grantee of the property; and

"(4) the number of acres designated, and if there is more than one survey, the number of acres in each. (V.A.C.S. Arts. 3841, 3842, 3843.)

"Section 41.023. NOTICE TO DESIGNATE. (a) If an execution is issued against an owner of a homestead that is eligible for voluntary designation but that has not been designated, the officer holding the execution may, and shall at the request of the plaintiff in execution or the plaintiff's agent or attorney, notify the defendant that if the defendant fails to designate a homestead before the 11th day after the date the notice is delivered, the officer will have the designation made as provided by law.

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"(b) The notice must be written or printed and signed by the officer. The officer shall serve the notice by reading it to the defendant or by leaving a copy at the defendant's residence with a person who is 14 years of age or older. On the notice the officer shall indicate how the notice was delivered and endorse the officer's return. The officer shall return the notice to the court that issued the execution, and the proper officer of that court shall file it. The filed notice is prima facie evidence of its factual statements. (V.A.C.S. Arts. 3845, 3846.)

"Section 41.024. DESIGNATION BY HOMESTEAD CLAIMANT AFTER NOTICE. Before the 11th day after the date a notice to designate is delivered, a defendant in execution may designate the homestead and deliver the designation to the officer who served the notice. The officer shall file the designation with the county clerk of the county in which a part of the homestead is located. The clerk shall promptly record the designation in the county deed records. (V.A.C.S. Arts. 3847, 3848.)

"Section 41.025. DESIGNATION BY COMMISSIONERS. If a defendant in execution does not designate a homestead before the 11th day after the date legal notice to designate was given, the officer holding the execution shall verbally or in writing promptly summon as commissioners three disinterested landowners of the county. The commissioners shall promptly designate the defendant's homestead. If they consider it necessary, the commissioners may hire a surveyor to assist them. (V.A.C.S. Arts. 3850, 3851 (part).)

"Section 41.026. FORM AND EFFECT OF DESIGNATION BY COMMISSIONERS. (a) A designation of a homestead by commissioners must be written, signed, and sworn to by a majority of the commissioners, after which it may be recorded. The designation must:

"(1) include each element required of a designation by the defendant; and

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"(2) state that the officer holding the execution summoned the commissioners to make the designation and that to the best of their judgment the designation is fair.

"(b) The commissioners shall return the designation to the officer, who shall file it for record with the county clerk. A designation made under this section or a certified copy of the designation has the same effect as a designation made by a defendant. (V.A.C.S. Arts. 3851 (part), 3852, 3853.)

"Section 41.027. FEES AND EXPENSES. For each day of service a commissioner is entitled to a fee of \$2, and a surveyor is entitled to a fee of \$5, including pay for chain carriers. The court shall tax these fees, the clerk's and officer's fees, and expenses against the defendant as part of the costs of execution and shall collect them as it collects other costs. (V.A.C.S. Art. 3855.)

"Section 41.028. SHERIFF'S RETURN. (a) If an officer holding an execution notifies the defendant in execution to designate a rural homestead, the officer shall make a return on the execution showing:

"(1) that notice to designate was given to the defendant, referring to the notice and return;

"(2) either that the defendant made a designation and stating the date it was delivered or that the defendant failed or refused to designate;

"(3) if appropriate, that the commissioners were appointed according to law, stating the date of the appointments; and

"(4) that the officer filed the designation of the defendant or the commissioners with the county clerk, stating the date of the filing.

"(b) The officer shall return the notice to designate with the execution.

"(c) A return under this section is prima facie evidence of its factual statement. (V.A.C.S. Art. 3854.)

"Section 41.029. SALE OF EXCESS. An officer holding an execution against a defendant whose homestead has been designated

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under this subchapter may sell the defendant's real property not included in the homestead according to the law governing execution sales. (V.A.C.S. Art. 3856.)

"Section 41.030. CHANGE OF DESIGNATION. A defendant may change the boundaries of a homestead designated under this subchapter by executing and recording an instrument in the manner required for a voluntary designation. A change under this section does not impair rights acquired by a party before the change. (V.A.C.S. Art. 3857.)

"CHAPTER 42. PERSONAL PROPERTY

"Section 42.001. PERSONAL PROPERTY EXEMPTION

"Section 42.002. PERSONAL PROPERTY ELIGIBLE FOR EXEMPTION

"Section 42.003. DESIGNATION OF EXEMPT PROPERTY

"Section 42.004. TRANSFER OF NONEXEMPT PROPERTY

"CHAPTER 42. PERSONAL PROPERTY

"Section 42.001. PERSONAL PROPERTY EXEMPTION. (a) Eligible personal property that is owned by a family and that has an aggregate fair market value of not more than \$30,000 is exempt from attachment, execution, and seizure for the satisfaction of debts, except for encumbrances properly fixed on the property.

"(b) Eligible personal property that is owned by a single adult who is not a member of a family and that has an aggregate fair market value of not more than \$15,000 is exempt from attachment, execution, and seizure for the satisfaction of debts, except for encumbrances properly fixed on the property.

"(c) The exemption provided in this section does not apply to a debt that is secured by a lien on the property or that is due for rents or advances from a landlord to the landlord's tenant. (V.A.C.S. Art. 3836, Sec. (a) (part); Art. 3840.)

"Section 42.002. PERSONAL PROPERTY ELIGIBLE FOR EXEMPTION. The following personal property is eligible for the exemption:

"(1) home furnishings, including family heirlooms;

"(2) provisions for consumption;

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"(3) if reasonably necessary for the family or single adult:

"(A) farming or ranching implements;

"(B) tools, equipment, books, and apparatus, including a boat, used in a trade or profession;

"(C) clothing;

"(D) two firearms; and

"(E) athletic and sporting equipment;

"(4) if not held or used for production of income, passenger cars and light trucks as defined by Section 2, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or, whether or not held for the production of income, two of the following categories of means of travel:

"(A) two animals from the following kinds with a saddle and bridle for each:

"(i) horses;

"(ii) colts;

"(iii) mules; and

"(iv) donkeys;

"(B) a bicycle or motorcycle;

"(C) a wagon, cart, or dray, with reasonably necessary harness;

"(D) an automobile;

"(E) a truck cab;

"(F) a truck trailer;

"(G) a camper truck;

"(H) a truck; and

"(I) a pickup truck;

"(5) the following animals and forage on hand reasonably necessary for their consumption:

"(A) 5 cows and their calves;

"(B) 1 breeding age bull;

"(C) 20 each of hogs, sheep, and goats;

"(D) 50 chickens; and

"(E) 30 each of turkeys, ducks, geese, and guineas;

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"(6) household pets:

"(7) the cash surrender value of any life insurance policy in force for more than two years to the extent that a member of the insured person's family or a dependent of the single person claiming the exemption is a beneficiary of the policy; and

"(8) current wages for personal services. (V.A.C.S. Art. 3836, Sec. (a) (part).)

"Section 42.003. DESIGNATION OF EXEMPT PROPERTY. (a) If a family or a single adult who is not a member of a family owns more of a kind of personal property than is eligible for exemption, the head of the family or the single adult may designate the portion of that kind of property to be levied on.

"(b) If a defendant in execution can be found in the county, the officer holding the execution shall ask the head of the family or the single adult to designate the personal property to be levied on. If the defendant cannot be found in the county or if the proper person fails to make a designation within a reasonable time after the officer's request, the officer may make the designation. (V.A.C.S. Art. 3859.)

"Section 42.004. TRANSFER OF NONEXEMPT PROPERTY. (a) If a person uses property not exempt under this chapter to acquire eligible personal property or an interest in eligible personal property or to make improvements or pay indebtedness on eligible personal property, with the intent to defraud, delay, or hinder an interested person from obtaining that to which the interested person is or may be entitled, the property, interest, or improvement acquired is not exempt from seizure for the satisfaction of liabilities. If the property, interest, or improvement is acquired by discharging an encumbrance held by a third person, a person defrauded, delayed, or hindered is subrogated to the rights of the third person.

"(b) A creditor may not assert a claim under this section more than four years after the transaction from which the claim arises. A person with a claim that is unliquidated or contingent

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at the time of the transaction may not assert a claim under this section more than one year after the claim is reduced to judgment. (V.A.C.S. Art. 3836, Secs. (b), (c), (d).)

"CHAPTER 43. EXEMPT PUBLIC PROPERTY

"Section 43.001. EXEMPT PUBLIC LIBRARY

"CHAPTER 43. EXEMPT PUBLIC PROPERTY

"Section 43.001. EXEMPT PUBLIC LIBRARY. A public library is exempt from attachment, execution, and forced sale. (V.A.C.S. Art. 3838.)

"[Chapters 44-50 reserved for expansion]

"SUBTITLE B. LIENS

"CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO LIENS

"Section 51.001. EFFECT ON OTHER LIENS

"Section 51.002. SALE OF REAL PROPERTY UNDER CONTRACT LIEN

"SUBTITLE B. LIENS

"CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO LIENS

"Section 51.001. EFFECT ON OTHER LIENS. Except as provided by Chapter 59, this subtitle does not affect:

"(1) the right to create a lien by special contract or agreement; or

"(2) a lien that is not treated in this subtitle, including a lien arising under common law, in equity, or under another statute of this state. (V.A.C.S. Art. 5506.)

"Section 51.002. SALE OF REAL PROPERTY UNDER CONTRACT LIEN.

(a) A sale of real property under a power of sale conferred by a deed of trust or other contract lien must be a public sale at auction held between 10 a.m. and 4 p.m. of the first Tuesday of a month. The sale must take place in the county in which the land is located, or if the property is located in more than one county, the sale may be made in any county in which the property is located.

"(b) Notice of the sale must be given at least 21 days before the date of the sale:

"(1) by posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold; and

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"(2) by the holder of the debt to which the power of sale is related serving written notice of the sale by certified mail on each debtor who, according to the records of the holder of the debt, is obligated to pay the debt.

"(c) Service of a notice by certified mail is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address as shown by the records of the holder of the debt. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service. (V.A.C.S. Art. 3810.)

"CHAPTER 52. JUDGMENT LIEN

"SUBCHAPTER A. GENERAL PROVISIONS

- "Section 52.001. ESTABLISHMENT OF LIEN
- "Section 52.002. ISSUANCE OF ABSTRACT
- "Section 52.003. CONTENTS OF ABSTRACT
- "Section 52.004. RECORDING AND INDEXING OF ABSTRACT
- "Section 52.005. SATISFACTION OF JUDGMENT
- "Section 52.006. DURATION OF LIEN
- "Section 52.007. FEDERAL COURT JUDGMENT
- "[Sections 52.008-52.020 reserved for expansion]

"SUBCHAPTER B. CANCELLATION OF JUDGMENTS AND
JUDGMENT LIENS AGAINST BANKRUPTS

- "Section 52.021. DISCHARGE AND CANCELLATION
- "Section 52.022. APPLICATION FOR COURT ORDER
- "Section 52.023. NOTICE OF APPLICATION
- "Section 52.024. COURT ORDER
- "Section 52.025. EFFECT ON LIEN OF DISCHARGE OF DEBT
IN BANKRUPTCY

"CHAPTER 52. JUDGMENT LIEN

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 52.001. ESTABLISHMENT OF LIEN. A first or subsequent abstract of judgment, when it is recorded and indexed in accordance with this chapter, constitutes a lien on the real

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property of the defendant located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing. (V.A.C.S. Art. 5449 (part).)

"Section 52.002. ISSUANCE OF ABSTRACT. (a) On application of a person in whose favor a judgment is rendered or on application of that person's agent, attorney, or assignee, the justice of the peace who rendered the judgment or the clerk of the court that rendered the judgment shall prepare and deliver to the applicant an abstract of the judgment.

"(b) The justice or clerk shall certify the abstract.

"(c) The applicant for the abstract must pay the fee allowed by law. (V.A.C.S. Art. 5447 (part).)

"Section 52.003. CONTENTS OF ABSTRACT. An abstract of a judgment must show:

"(1) the names of the plaintiff and defendant;

"(2) the birthdate and driver's license number of the defendant, if available to the clerk or justice;

"(3) the number of the suit in which the judgment was rendered;

"(4) the defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;

"(5) the date on which the judgment was rendered;

"(6) the amount for which the judgment was rendered and the balance due; and

"(7) the rate of interest specified in the judgment.
(V.A.C.S. Art. 5447 (part).)

"Section 52.004. RECORDING AND INDEXING OF ABSTRACT. (a) The county clerk shall immediately record in the county judgment records each properly authenticated abstract of judgment that is presented for recording. The clerk shall note in the records the date and hour an abstract of judgment is received.

"(b) At the same time an abstract is recorded, the county clerk shall enter the abstract on the alphabetical index to the judgment records, showing:

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"(1) the name of each plaintiff in the judgment;

"(2) the name of each defendant in the judgment; and

"(3) the number of the page in the records in which the abstract is recorded.

"(c) The clerk shall leave a space at the foot of each recorded abstract for the entry of credits on or satisfaction of the judgment and shall make those entries when credits are properly shown. (V.A.C.S. Art. 5448.)

"Section 52.005. SATISFACTION OF JUDGMENT. Satisfaction of a judgment in whole or in part may be shown by:

"(1) return on an execution issued on the judgment, or a copy of the return, certified by the officer making the return and showing:

"(A) the names of the parties to the judgment;

"(B) the number and style of the suit;

"(C) the court in which the judgment was rendered;

"(D) the date and amount of the judgment; and

"(E) the dates of issuance and return of the execution; or

"(2) a receipt, acknowledgement, or release that is signed by the party entitled to receive payment of the judgment or by that person's agent or attorney of record and that is acknowledged or proven for record in the manner required for deeds. (V.A.C.S. Art. 5450.)

"Section 52.006. DURATION OF LIEN. A judgment lien continues for 10 years following the date of recording and indexing the abstract, except that if the judgment becomes dormant during that period the lien ceases to exist. (V.A.C.S. Art. 5449 (part).)

"Section 52.007. FEDERAL COURT JUDGMENT. An abstract of a judgment rendered in this state by a federal court may be recorded and indexed under this chapter on the certificate of the clerk of the court. (V.A.C.S. Art. 5451.)

"[Sections 52.008-52.020 reserved for expansion]

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"SUBCHAPTER B. CANCELLATION OF JUDGMENTS AND JUDGMENT
LIENS AGAINST BANKRUPTS

"Section 52.021. DISCHARGE AND CANCELLATION. (a) In accordance with this chapter, a judgment and judgment lien may be discharged and canceled if the person against whom the judgment was rendered is discharged from his debts under federal bankruptcy law.

"(b) This chapter applies to judgments against persons whose debts are discharged in bankruptcy regardless of the fact that the discharge in bankruptcy occurred before this law took effect. (V.A.C.S. Art. 5449(a), Sec. 1 (part).)

"Section 52.022. APPLICATION FOR COURT ORDER. (a) The person who has been discharged from his debts, that person's receiver or trustee, or any other interested person may apply, on proof of the discharge, to the court in which the judgment was rendered for an order discharging and canceling the judgment and judgment lien.

"(b) A person may not apply for the order before a year has elapsed since the bankruptcy discharge. (V.A.C.S. Art. 5449(a), Sec. 1 (part).)

"Section 52.023. NOTICE OF APPLICATION. (a) Notice of the application for the order and copies of the papers on which application is made must be served on the judgment creditor or his attorney of record in the action in which the judgment was rendered.

"(b) If the residence or place of business of the judgment creditor or his attorney is known, notice must be served in the manner prescribed for service of notice in an action.

"(c) As an alternative to service under Subsection (b), the court may order that notice of the application be published in a newspaper designated in the order once a week for not more than three consecutive weeks if the applicant proves by affidavit that:

"(1) the address of neither the judgment creditor nor his attorney is known and the address of neither can be ascertained by due diligence; or

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"(2) the judgment creditor is not a resident of this state and his attorney is dead, removed from the state, or unknown. (V.A.C.S. Art. 5449(a), Sec. 3.)

"Section 52.024. COURT ORDER. (a) The court shall conduct a hearing on the application and shall enter an order of discharge and cancellation of the judgment and any abstracts of the judgment if the debtor or bankrupt has been discharged in bankruptcy from the payment of the obligation or debt represented by the judgment.

"(b) In each county in which the court's order is recorded in the judgment lien records, the order constitutes a release, discharge, and cancellation of the judgment and of any unsatisfied judgment lien represented by an abstract that is of record in the county on the date of the order or is recorded in the county on or after the date of the order. (V.A.C.S. Art. 5449(a), Sec. 2.)

"Section 52.025. EFFECT ON LIEN OF DISCHARGE OF DEBT IN BANKRUPTCY. (a) A judgment lien is not affected by the order of discharge and cancellation and may be enforced, if the lien is against real property owned by the bankrupt or debtor before the debtor was adjudged bankrupt or a petition for debtor relief was filed under federal bankruptcy law, and:

"(1) the debt or obligation evidenced by the judgment is not discharged in bankruptcy; or

"(2) the property is nonexempt and is abandoned during the course of the proceeding.

"(b) Except as provided by Subsection (a), the judgment is of no force or validity and may not be a lien on real property acquired by the bankrupt or debtor after the discharge in bankruptcy. (V.A.C.S. Art. 5449(a), Secs. 4, 5.)

"CHAPTER 53. MECHANIC'S, CONTRACTOR'S, OR MATERIALMAN'S LIEN

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 53.001. DEFINITIONS

"Section 53.002. MORE THAN ONE ORIGINAL CONTRACTOR

"Section 53.003. NOTICES

"[Sections 53.004-53.020 reserved for expansion]

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"SUBCHAPTER B. PERSONS ENTITLED TO LIEN; SUBJECT PROPERTY

- "Section 53.021. PERSONS ENTITLED TO LIEN
- "Section 53.022. PROPERTY TO WHICH LIEN EXTENDS
- "Section 53.023. PAYMENT SECURED BY LIEN
- "Section 53.024. LIMITATION ON SUBCONTRACTOR'S LIEN
- "Section 53.025. LIMITATION ON ORDINARY RETAINAGE LIEN
- "Section 53.026. SHAM CONTRACT; PENALTY FOR CERTAIN
FALSE STATEMENTS

"[Sections 53.027-53.050 reserved for expansion]

"SUBCHAPTER C. PROCEDURE FOR PERFECTING LIEN

- "Section 53.051. NECESSARY PROCEDURES
- "Section 53.052. FILING OF AFFIDAVIT
- "Section 53.053. ACCRUAL OF INDEBTEDNESS
- "Section 53.054. CONTENTS OF AFFIDAVIT
- "Section 53.055. NOTICE OF FILED AFFIDAVIT
- "Section 53.056. DERIVATIVE CLAIMANT: NOTICE TO OWNER OR
ORIGINAL CONTRACTOR
- "Section 53.057. DERIVATIVE CLAIMANT: NOTICE FOR
CONTRACTUAL RETAINAGE CLAIM
- "Section 53.058. DERIVATIVE CLAIMANT: NOTICE FOR
SPECIALLY FABRICATED ITEM
- "Section 53.059. HOMESTEAD

"[Sections 53.060-53.080 reserved for expansion]

"SUBCHAPTER D. FUNDS WITHHELD BY OWNER FOLLOWING NOTICE

- "Section 53.081. AUTHORITY TO WITHHOLD FUNDS FOR BENEFIT
OF CLAIMANTS
- "Section 53.082. TIME FOR WHICH FUNDS ARE WITHHELD
- "Section 53.083. PAYMENT TO CLAIMANT ON DEMAND
- "Section 53.084. OWNER'S LIABILITY

"[Sections 53.085-53.100 reserved for expansion]"

"SUBCHAPTER E. REQUIRED RETAINAGE FOR BENEFIT OF LIEN CLAIMANTS

- "Section 53.101. REQUIRED RETAINAGE
- "Section 53.102. PAYMENT SECURED BY RETAINAGE

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"Section 53.103. LIEN ON RETAINED FUNDS

"Section 53.104. PREFERENCES

"Section 53.105. OWNER'S LIABILITY FOR FAILURE TO RETAIN

"[Sections 53.106-53.120 reserved for expansion]

"SUBCHAPTER F. PRIORITIES AND PREFERENCES

"Section 53.121. PREFERENCE OVER OTHER CREDITORS

"Section 53.122. EQUALITY OF MECHANIC'S LIENS

"Section 53.123. PRIORITY OF MECHANIC'S LIEN OVER OTHER
LIENS

"Section 53.124. INCEPTION OF MECHANIC'S LIEN

"[Sections 53.125-53.150 reserved for expansion]

"SUBCHAPTER G. RELEASE AND FORECLOSURE; ACTION ON CLAIM

"Section 53.151. RELINQUISHMENT FOLLOWING CONTRACT COMPLIANCE;

GARNISHMENT OF MONEY DUE

ORIGINAL CONTRACTOR

"Section 53.152. RECORDING OF LIEN RELEASE

"Section 53.153. DEFENSE OF ACTIONS

"Section 53.154. FORECLOSURE

"Section 53.155. TRANSFER OF PROPERTY SOLD

"[Sections 53.156-53.170 reserved for expansion]

"SUBCHAPTER H. BOND TO INDEMNIFY AGAINST LIEN

"Section 53.171. BOND

"Section 53.172. BOND REQUIREMENTS

"Section 53.173. NOTICE OF BOND

"Section 53.174. RECORDING OF BOND AND NOTICE

"Section 53.175. ACTION ON BOND

"Section 53.176. ATTORNEY'S FEES

"[Sections 53.177-53.200 reserved for expansion]

"SUBCHAPTER I. BOND TO PAY LIENS OR CLAIMS

"Section 53.201. BOND

"Section 53.202. BOND REQUIREMENTS

"Section 53.203. RECORDING OF BOND AND CONTRACT

"Section 53.204. RELIANCE ON RECORD

"Section 53.205. ENFORCEABLE CLAIMS

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"Section 53.206. PERFECTION OF CLAIM
"Section 53.207. OWNER'S NOTICE OF CLAIM TO SURETY
"Section 53.208. ACTION ON BOND
"Section 53.209. ATTORNEY'S FEES
"Section 53.210. CLAIMS IN EXCESS OF BOND AMOUNT
"Section 53.211. ATTEMPTED COMPLIANCE
"[Sections 53.212-53.230 reserved for expansion]

"SUBCHAPTER J. LIEN ON MONEY DUE PUBLIC WORKS CONTRACTOR

"Section 53.231. LIEN
"Section 53.232. TO WHOM NOTICE GIVEN; MANNER
"Section 53.233. CONTENTS OF NOTICE
"Section 53.234. TIME FOR NOTICE
"Section 53.235. OFFICIAL TO RETAIN FUNDS
"Section 53.236. BOND FOR RELEASE OF LIEN
"Section 53.237. BOND REQUIREMENTS
"Section 53.238. NOTICE OF BOND
"Section 53.239. ACTION ON BOND
"Section 53.240. ATTORNEY'S FEES

"CHAPTER 53. MECHANIC'S, CONTRACTOR'S, OR MATERIALMAN'S LIEN

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 53.001. DEFINITIONS. In this chapter:

"(1) 'Contract price' means the cost to the owner for any part of construction or repair performed under an original contract.

"(2) 'Improvement' includes:

"(A) abutting sidewalks and streets and utilities in or on those sidewalks and streets;

"(B) clearing, grubbing, draining, or fencing of land;

"(C) wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water;

"(D) pumps, siphons, and windmills or other machinery or apparatuses used for raising water for stock, domestic use, or irrigation; and

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"(E) planting orchard trees, grubbing out orchards and replacing trees, and pruning of orchard trees.

"(3) 'Labor' means labor used in the direct prosecution of the work.

"(4) 'Material' means all or part of:

"(A) the material, machinery, fixtures, or tools incorporated into the work, consumed in the direct prosecution of the work, or ordered and delivered for incorporation or consumption;

"(B) rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment used or reasonably required and delivered for use in the direct prosecution of the work at the site of the construction or repair; or

"(C) power, water, fuel, and lubricants consumed or ordered and delivered for consumption in the direct prosecution of the work.

"(5) 'Mechanic's lien' means the lien provided by this chapter.

"(6) 'Original contract' means an agreement to which an owner is a party either directly or by implication of law.

"(7) 'Original contractor' means a person contracting with an owner either directly or through the owner's agent.

"(8) 'Retainage' means an amount representing part of a contract payment that is not required to be paid to the claimant within the month following the month in which labor is performed, material is furnished, or specially fabricated material is delivered. The term does not include retainage under Subchapter E.

"(9) 'Specially fabricated material' means material fabricated for use as a component of the construction or repair so as to be reasonably unsuitable for use elsewhere.

"(10) 'Subcontractor' means a person who has furnished labor or materials to fulfill an obligation to an original contractor or to a subcontractor to perform all or part of the work required by an original contract.

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"(11) 'Work' means any part of construction or repair performed under an original contract. (V.A.C.S. Art. 5452, Secs. 1 (part), 2 (part).)

"Section 53.002. MORE THAN ONE ORIGINAL CONTRACTOR. On any work there may be more than one original contractor for purposes of this chapter. (V.A.C.S. Art. 5452, Sec. 2 (part).)

"Section 53.003. NOTICES. (a) This section applies to notices required by Subchapters B through G.

"(b) Any notice or other written communication may be delivered in person to the party entitled to the notice or to that party's agent, regardless of the manner prescribed by law.

"(c) If notice is sent by registered or certified mail, deposit or mailing of the notice in the United States mail in the form required constitutes compliance with the notice requirement. This subsection does not apply if the law requires receipt of the notice by the person to whom it is directed.

"(d) If a written notice is received by the person entitled to receive it, the method by which the notice was delivered is immaterial. (V.A.C.S. Art. 5456.)

"[Sections 53.004-53.020 reserved for expansion]

"SUBCHAPTER B. PERSONS ENTITLED TO LIEN; SUBJECT PROPERTY

"Section 53.021. PERSONS ENTITLED TO LIEN. (a) A person, including a lumber dealer, artisan, laborer, mechanic, or subcontractor, has a lien if:

"(1) the person labors, specially fabricates material, or furnishes labor or materials for construction or repair in this state of:

"(A) a house, building, or improvement;

"(B) a levee or embankment to be erected for the reclamation of overflow land along a river or creek; or

"(C) a railroad; and

"(2) the person labors, specially fabricates the material, or furnishes the labor or materials under or by virtue of a

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contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor.

"(b) A person who specially fabricates material has a lien even if the material is not delivered. (V.A.C.S. Art. 5452, Secs. 1 (part), 2 (part).)

"Section 53.022. PROPERTY TO WHICH LIEN EXTENDS. (a) The lien extends to the house, building, fixtures, or improvements, the land reclaimed from overflow, or the railroad and all of its properties, and to each lot of land necessarily connected or reclaimed.

"(b) The lien does not extend to abutting sidewalks, streets, and utilities that are public property.

"(c) A lien against land in a city, town, or village extends to each lot on which the house, building, or improvement is situated or on which the labor was performed.

"(d) A lien against land not in a city, town, or village extends to not more than 50 acres on which the house, building, or improvement is situated or on which the labor was performed. (V.A.C.S. Art. 5452, Sec. 1 (part); Art. 5458.)

"Section 53.023. PAYMENT SECURED BY LIEN. The lien secures payment for:

"(1) the labor done or material furnished for the construction or repair; or

"(2) the specially fabricated material, even if the material has not been delivered or incorporated into the construction or repair, less its fair salvage value. (V.A.C.S. Art. 5452, Sec. 1 (part).)

"Section 53.024. LIMITATION ON SUBCONTRACTOR'S LIEN. The amount of a lien claimed by a subcontractor may not exceed:

"(1) an amount equal to the proportion of the total subcontract price that the sum of the labor performed, materials furnished, materials specially fabricated, reasonable overhead costs incurred, and proportionate profit margin bears to the total subcontract price; minus

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"(2) the sum of previous payments received by the claimant on the subcontract. (V.A.C.S. Art. 5452, Sec. 2 (part).)

"Section 53.025. LIMITATION ON ORDINARY RETAINAGE LIEN. A lien for retainage is valid only for the amount specified to be retained in the contract between the claimant and the original contractor or between the claimant and a subcontractor. (V.A.C.S. Art. 5452, Sec. 2 (part).)

"Section 53.026. SHAM CONTRACT; PENALTY FOR CERTAIN FALSE STATEMENTS. (a) A person who labors, specially fabricates materials, or furnishes labor or materials under a direct contractual relationship with a corporation or individual, as applicable, is considered to be in direct contractual relationship with the owner and has a lien as an original contractor, if:

"(1) the owner contracted with the corporation for the construction or repair of a house, building, or improvements and the owner can effectively control the corporation through ownership of voting stock, interlocking directorships, or otherwise; or

"(2) the owner contracted with the corporation or individual for the construction or repair of a house, building, or improvements and the contract was made without good faith intention of the parties that the individual or corporation was to perform the contract.

"(b) A person commits an offense if, for the purpose of procuring money or any other thing of value in connection with the construction or repair:

"(1) the person knowingly and with intent to defraud makes or causes to be made a false written statement to the effect that a bill, charge, account, or claim for labor performed or for material or specially fabricated material furnished for the construction or repair of a house, building, or improvement has been paid or satisfied in full or in part; and

"(2) the person is:

"(A) the owner of the real property or the owner's agent;

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"(B) an agent, director, officer, or employee of a corporation, firm, or association that is owner of the real property;

"(C) an agent, director, officer, or employee of a corporation that is in direct contractual relationship with the owner of the real property and that the owner of the real property can effectively control through the ownership of voting stock, interlocking directorship, or otherwise; or

"(D) in direct contractual relationship with the owner of the real property or is an agent, director, officer, or employee of a corporation that is in direct contractual relationship with the owner, and the contract was entered into without good faith or without intent that the contract was to be performed by the person or corporation.

"(c) An offense under Subsection (b) is a misdemeanor punishable by:

"(1) a fine of not less than \$100 nor more than \$5,000;

"(2) confinement in county jail for not more than one year;

or

"(3) both the fine and the confinement.

"(d) In this section, 'owner' does not include a person who has or claims a security interest only. (V.A.C.S. Art. 5452-1.)

"[Sections 53.027-53.050 reserved for expansion]

"SUBCHAPTER C. PROCEDURE FOR PERFECTING LIEN

"Section 53.051. NECESSARY PROCEDURES. To perfect the lien, a person must comply with this subchapter. (V.A.C.S. Art. 5452, Sec. 1 (part).)

"Section 53.052. FILING OF AFFIDAVIT. (a) The person claiming the lien must file an affidavit with the county clerk of the county in which the property is located or into which the railroad extends.

"(b) An original contractor must file the affidavit not later than the 120th day after the day on which the indebtedness accrues.

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"(c) A lumber dealer, artisan, laborer, mechanic, subcontractor, or other person who is not an original contractor must file the affidavit not later than the 90th day after the day on which the indebtedness accrues.

"(d) The county clerk shall record the affidavit in records kept for that purpose and shall index and cross-index the affidavit in the names of the claimant, the original contractor, and the owner. Failure of the county clerk to properly record or index a filed affidavit does not invalidate the lien. (V.A.C.S. Art. 5453 (part).)

"Section 53.053. ACCRUAL OF INDEBTEDNESS. (a) For purposes of Section 53.052, indebtedness accrues on a contract under which labor was performed, materials furnished, or specially fabricated material is to be furnished in accordance with this section.

"(b) Indebtedness to an original contractor accrues:

"(1) immediately on any material breach or termination of the original contract by the owner; or

"(2) on the 10th day of the month following the month in which the original contract has been completed, finally settled, or abandoned.

"(c) Indebtedness to an artisan, laborer, or mechanic who has labored at an hourly, daily, or weekly rate of pay for an original contractor or a subcontractor accrues at the end of the calendar week during which the labor was performed.

"(d) Indebtedness to a subcontractor, or to any person not covered by Subsection (b), (c), or (e), who has furnished labor or material to an original contractor or to another subcontractor accrues on the 10th day of the month following the last month in which the labor was performed or the material furnished.

"(e) Indebtedness for specially fabricated material accrues:

"(1) on the 10th day of the month following the last month in which materials were delivered;

"(2) on the 10th day of the month following the last month in which delivery of the last of the material would normally have been required at the job site; or

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"(3) immediately on any material breach or termination of the original contract by the owner or contractor or of the subcontract under which the specially fabricated material was furnished.

"(f) A claim for retainage accrues on the 10th day of the month following the month in which all work called for by the contract between the owner and the original contractor has been completed, finally settled, or abandoned. (V.A.C.S. Art. 5467.)

"Section 53.054. CONTENTS OF AFFIDAVIT. (a) The affidavit must be signed by the person claiming the lien or by another person on the claimant's behalf and must contain substantially:

"(1) a sworn statement of the claim, including the amount;

"(2) the name of the owner or reputed owner, if known;

"(3) a general statement of the kind of work done and materials furnished by the claimant;

"(4) the name of the person by whom the claimant was employed or to whom the claimant furnished the materials or labor;

"(5) the name of the original contractor; and

"(6) a description, legally sufficient for identification, of the property sought to be charged with the lien.

"(b) The claimant may attach to the affidavit a copy of any applicable written agreement or contract.

"(c) The affidavit is not required to set forth individual items of work done or material furnished or specially fabricated. The affidavit may use any abbreviations or symbols customary in the trade. (V.A.C.S. Art. 5455.)

"Section 53.055. NOTICE OF FILED AFFIDAVIT. A person who files an affidavit must send two copies of the affidavit by registered or certified mail to the owner at the owner's last known business or residence address. (V.A.C.S. Art. 5453 (part).)

"Section 53.056. DERIVATIVE CLAIMANT: NOTICE TO OWNER OR ORIGINAL CONTRACTOR. (a) A claimant other than an original contractor must give the notice prescribed by this section for the lien to be valid.

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"(b) If the lien claim arises from a debt incurred by a subcontractor, the claimant must give to the original contractor written notice of the unpaid balance. The claimant must give the notice not later than the 36th day following the 10th day of the month following each month in which all or part of the claimant's labor was performed or material delivered. The claimant must give the same notice to the owner not later than the 90th day after the 10th day of the month following each month in which all or part of the claimant's labor was performed or material or specially fabricated material was delivered.

"(c) If the lien claim arises from a debt incurred by the original contractor, the claimant must give notice to the owner in accordance with Subsection (b) but is not required to give notice to the original contractor.

"(d) To authorize the owner to withhold funds under Subchapter D, the notice to the owner must state that if the bill remains unpaid, the owner may be personally liable and the owner's property may be subjected to a lien unless:

"(1) the owner withholds payments from the contractor for payment of the bill; or

"(2) the bill is otherwise paid or settled.

"(e) The notice must be sent by registered or certified mail and must be addressed to the owner or original contractor, as applicable, at his last known business or residence address.

"(f) A copy of the statement or billing in the usual and customary form is sufficient as notice under this section. (V.A.C.S. Art. 5453 (part).)

"Section 53.057. DERIVATIVE CLAIMANT: NOTICE FOR CONTRACTUAL RETAINAGE CLAIM. (a) A claimant may give notice under this section instead of or in addition to notice under Section 53.056 if the claimant is to labor, furnish labor or materials, or specially fabricate materials under an agreement with an original contractor or a subcontractor providing for retainage.

"(b) The claimant must give the owner notice of the retainage agreement not later than the 36th day after the 10th day

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of the month following the month in which the agreement is made. If the agreement is with a subcontractor, the claimant must also give notice within that time to the original contractor.

"(c) The notice must contain:

"(1) the sum to be retained;

"(2) the due date or dates, if known; and

"(3) a general indication of the nature of the agreement.

"(d) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or original contractor, as applicable.

"(e) A claimant who gives notice under this section and Section 53.055 is not required to give any other notice as to the retainage. (V.A.C.S. Art. 5453 (part).)

"Section 53.058. DERIVATIVE CLAIMANT: NOTICE FOR SPECIALLY FABRICATED ITEMS. (a) A claimant who specially fabricates material must give notice under this section for the lien to be valid.

"(b) The claimant must give the owner notice not later than the 36th day after the 10th day of the month following the month in which the claimant receives and accepts the order for the material. If the indebtedness is incurred by a person other than the original contractor, the claimant must also give notice within that time to the original contractor.

"(c) The notice must contain.

"(1) a statement that the order has been received and accepted; and

"(2) the price of the order.

"(d) The notice must be sent by registered or certified mail to the last known business or residence address of the owner or original contractor, as applicable.

"(e) In addition to notice under this section, the claimant must give notice under Section 53.056 if delivery has been made or if the normal delivery time for the job has passed.

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"(f) The lien of a claimant who accepts an order but fails to give notice under this section is valid as to delivered items if the claimant has given notice under Section 53.056.

"(g) If a retainage agreement consists in whole or part of an obligation to furnish specially fabricated materials and the claimant has given notice under Section 53.057, the claimant is not required to give notice under this section. (V.A.C.S. Art. 5453 (part).)

"Section 53.059. HOMESTEAD. (a) To fix the lien on a homestead, the person who is to furnish material or perform labor and the owner must execute a written contract setting forth the terms of the agreement.

"(b) The contract must be entered before the material is furnished or the labor is performed.

"(c) If the owner is married, the contract must be signed by both spouses.

"(d) The contract must be filed with the county clerk of the county in which the homestead is located, who shall record it in records kept for that purpose.

"(e) If the contract is made and recorded by an original contractor, the contract inures to the benefit of all persons who labor or furnish material for the original contractor. (V.A.C.S. Art. 5460.)

"[Sections 53.060-53.080 reserved for expansion]

"SUBCHAPTER D. FUNDS WITHHELD BY OWNER FOLLOWING NOTICE

"Section 53.081. AUTHORITY TO WITHHOLD FUNDS FOR BENEFIT OF CLAIMANTS. (a) If an owner receives notice under Section 53.056, 53.057, or 53.058, the owner may withhold from payments to the original contractor an amount necessary to pay the claim for which he receives notice.

"(b) If notice is sent under Section 53.056, the owner may withhold the funds immediately on receipt of the notice.

"(c) If notice is sent under Section 53.057, the owner may withhold funds immediately on receipt of a copy of the claimant's

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affidavit prepared in accordance with Sections 53.052 through 53.055.

"(d) If notice is sent under Section 53.058, the owner may withhold funds immediately on receipt of the notices sent under Subsection (e) of that section. (V.A.C.S. Art. 5463, Sec. 1 (part).)

"Section 53.082. TIME FOR WHICH FUNDS ARE WITHHELD. Unless payment is made under Section 53.083 or the claim is otherwise settled or determined, the owner shall retain the funds withheld until:

"(1) the time for securing the mechanic's lien has passed; or

"(2) if a lien affidavit has been filed, until the lien claim has been satisfied or released. (V.A.C.S. Art. 5463, Sec. 1 (part).)

"Section 53.083. PAYMENT TO CLAIMANT ON DEMAND. (a) The claimant may make written demand for payment of the claim to an owner authorized to withhold funds under this subchapter. The demand must give notice to the owner that all or part of the claim has accrued under Section 53.053 or is past due according to the agreement between the parties.

"(b) The claimant must send a copy of the demand to the original contractor. The original contractor may give the owner written notice that the contractor intends to dispute the claim. The original contractor must give the notice not later than the 30th day after the day he receives a copy of the demand. If the original contractor does not give the owner timely notice, he is considered to have assented to the demand and the owner shall pay the claim.

"(c) The claimant's demand may accompany the original notice of nonpayment or of a past-due claim and may be stamped or written in legible form on the face of the notice.

"(d) Unless the lien has been secured, the demand may not be made after expiration of the time within which the claimant may secure the lien for the claim. (V.A.C.S. Art. 5453 (part), 5454.)

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"Section 53.084. OWNER'S LIABILITY. (a) Except for the amount required to be retained under Subchapter E, the owner is not liable for any amount paid to the original contractor before the owner is authorized to withhold funds under this subchapter.

"(b) If the owner has received the notices required by Subchapter C, if the lien has been secured, and if the claim has been reduced to final judgment, the owner is liable and the owner's property is subject to a claim for any money paid to the original contractor after the owner was authorized to withhold funds under this subchapter. The owner is liable for that amount in addition to any amount for which he is liable under Subchapter E. (V.A.C.S. Art. 5463, Sec. 2 (part).)

"[Sections 53.085-53.100 reserved for expansion]

"SUBCHAPTER E. REQUIRED RETAINAGE FOR BENEFIT OF
LIEN CLAIMANTS

"Section 53.101. REQUIRED RETAINAGE. (a) During the progress of work for which a mechanic's lien may be claimed and for 30 days after the work is completed, the owner shall retain:

"(1) 10 percent of the contract price of the work to the owner; or

"(2) 10 percent of the value of the work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the reasonable value of the completed work.

"(b) In this section, 'owner' includes the owner's agent, trustee, or receiver. (V.A.C.S. Art. 5469 (part).)

"Section 53.102. PAYMENT SECURED BY RETAINAGE. The retained funds secure the payment of artisans and mechanics who perform labor or service and the payment of other persons who furnish material, material and labor, or specially fabricated material for any contractor, subcontractor, agent, or receiver in the performance of the work. (V.A.C.S. Art. 5469 (part).)

"Section 53.103. LIEN ON RETAINED FUNDS. A claimant has a lien on the retained funds if the claimant:

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"(1) sends the notices required by this chapter in the time and manner required; and

"(2) files an affidavit claiming a lien not later than the 30th day after the work is completed. (V.A.C.S. Art. 5469 (part).)

"Section 53.104. PREFERENCES. (a) Artisans and mechanics are entitled to a preference to the retained funds and shall share proportionately to the extent of their claims.

"(b) After payment of artisans and mechanics, other participating claimants share proportionately in the balance of the retained funds. (V.A.C.S. Art. 5469 (part).)

"Section 53.105. OWNER'S LIABILITY FOR FAILURE TO RETAIN.

(a) If the owner fails or refuses to comply with this subchapter, the claimants complying with this subchapter have a lien, at least to the extent of the amount that should have been retained, against the house, building, structure, fixture, or improvement and all of its properties and against the lot or lots of land necessarily connected.

"(b) The claimants share the lien proportionately in accordance with the preference provided by Section 53.104. (V.A.C.S. Art. 5469 (part).)

"[Sections 53.106-53.120 reserved for expansion]

"SUBCHAPTER F. PRIORITIES AND PREFERENCES

"Section 53.121. PREFERENCE OVER OTHER CREDITORS. All subcontractors, laborers, and materialmen who have a mechanic's lien have preference over other creditors of the original contractor. (V.A.C.S. Art. 5464.)

"Section 53.122. EQUALITY OF MECHANIC'S LIENS. (a) Except as provided by Subchapter E, perfected mechanic's liens are on equal footing without reference to the date of filing the affidavit claiming the lien.

"(b) If the proceeds of a foreclosure sale of property are insufficient to discharge all mechanic's liens against the property, the proceeds shall be paid pro rata on the perfected mechanic's liens on which suit is brought.

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"(c) This chapter does not affect the contract between the owner and the original contractor as to the amount, manner, or time of payment of the contract price. (V.A.C.S. Art. 5468.)

"Section 53.123. PRIORITY OF MECHANIC'S LIEN OVER OTHER LIENS. (a) Except as provided by this section, a mechanic's lien attaches to the house, building, improvements, or railroad property in preference to any prior lien, encumbrance, or mortgage on the land on which it is located, and the person enforcing the lien may have the house, building, improvement, or any piece of the railroad property sold separately.

"(b) The mechanic's lien does not affect any lien, encumbrance, or mortgage on the land or improvement at the time of the inception of the mechanic's lien, and the holder of the lien, encumbrance, or mortgage need not be made a party to a suit to foreclose the mechanic's lien. (V.A.C.S. Art. 5459, Sec. 1.)

"Section 53.124. INCEPTION OF MECHANIC'S LIEN. (a) For purposes of Section 53.123, the time of inception of a mechanic's lien is the earlier of:

"(1) commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used; or

"(2) recording of a written agreement, or if the agreement is oral, an affidavit stating that the lien claimant has entered into an agreement with the owner or the owner's contractor or subcontractor, to construct all or part of any improvements or to perform labor, furnish material, or provide specially fabricated material in connection with the construction.

"(b) The construction or materials under Subdivision (1) of Subsection (a) must be visible from inspection of the land on which the improvements are being made.

"(c) The contract or affidavit under Subdivision (2) of Subsection (a) must be recorded in the mechanic's lien records of the county in which the land is located.

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"(d) The affidavit under Subdivision (2) of Subsection (a) must contain:

"(1) a description of the land;

"(2) the name and address of the lien claimant;

"(3) the name and address of the person with whom the lien claimant has contracted for the improvements, labor, materials, or specially fabricated materials; and

"(4) a general description of the improvements for which the parties contracted. (V.A.C.S. Art. 5459, Sec. 2.)

"[Sections 53.125-53.150 reserved for expansion]

"SUBCHAPTER G. RELEASE AND FORECLOSURE; ACTION ON CLAIM

"Section 53.151. RELINQUISHMENT FOLLOWING CONTRACT COMPLIANCE; GARNISHMENT OF MONEY DUE ORIGINAL CONTRACTOR. (a) When the debt is paid under the contract for construction, the party for whose interest the contract was recorded shall enter a relinquishment showing full compliance with the contract to the extent of all money due the party from the original contractor on account of labor done or material furnished.

"(b) A creditor may not garnish the money due the original contractor from the owner to the prejudice of the subcontractors, mechanics, laborers, or materialmen. (V.A.C.S. Art. 5466.)

"Section 53.152. RECORDING OF LIEN RELEASE. The claimant of a recorded mechanic's lien shall record a relinquishment and satisfaction of the lien when the lien is paid or satisfied or when the claimant receives the proper lienable parts for which the owner is liable under this chapter. (V.A.C.S. Art. 5470.)

"Section 53.153. DEFENSE OF ACTIONS. (a) If an affidavit claiming a mechanic's lien is filed by a person other than the original contractor, the original contractor shall defend at his own expense a suit brought on the claim.

"(b) If the suit results in judgment on the lien against the owner or the owner's property, the owner is entitled to deduct the amount of the judgment and costs from any amount due the original contractor. If the owner has settled with the original contractor

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in full, the owner is entitled to recover from the original contractor any amount paid for which the original contractor was originally liable. (V.A.C.S. Art. 5463, Sec. 2 (part).)

"Section 53.154. FORECLOSURE. A mechanic's lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien. (V.A.C.S. Art. 5472.)

"Section 53.155. TRANSFER OF PROPERTY SOLD. If the house, building, improvement, or any piece of railroad property is sold separately, the officer making the sale shall place the purchaser in possession. The purchaser is entitled to a reasonable time after the date of purchase within which to remove the purchased property. (V.A.C.S. Art. 5471.)

"[Sections 53.156-53.170 reserved for expansion]

"SUBCHAPTER H. BOND TO INDEMNIFY AGAINST LIEN

"Section 53.171. BOND. (a) If a lien, other than a lien granted by the owner in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter, the owner or the contractor or subcontractor through whom the lien is claimed may file a bond to indemnify against the lien.

"(b) The bond shall be filed with the county clerk of the county in which the property subject to the lien is located.

"(c) An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. (V.A.C.S. Art. 5472c, Secs. 1 (part), 4 (part).)

"Section 53.172. BOND REQUIREMENTS. The bond must:

"(1) describe the property on which the liens are claimed;

"(2) refer to each lien claimed in a manner sufficient to identify it;

"(3) be in an amount double the amount of the liens referred to;

"(4) be payable to the parties claiming the liens;

"(5) be executed by:

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"(A) the party filing the bond as principal; and

"(B) a corporate surety authorized under the law of this state to execute the bond as surety; and

"(6) be conditioned substantially that the principal and sureties will pay to the named obligees or to their assignees the amount of the liens claimed, plus costs, if the claims are proved to be liens on the property. (V.A.C.S. Art. 5472c, Sec. 1 (part).)

"Section 53.173. NOTICE OF BOND. (a) After the bond is filed, the county clerk shall issue notice of the bond to all named obligees.

"(b) A copy of the bond must be attached to the notice.

"(c) The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery.

"(d) The original notice shall be returned to the office of the county clerk, and the person making service of copies shall make an oath on the back of the copies showing on whom and on what date the copies were served. (V.A.C.S. Art. 5472c, Sec. 2.)

"Section 53.174. RECORDING OF BOND AND NOTICE. (a) The county clerk shall record the bond, notice, and return in the mechanic's lien records.

"(b) In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return. (V.A.C.S. Art. 5472c, Sec. 3.)

"Section 53.175. ACTION ON BOND. (a) A party making or holding a lien claim may sue on the bond after the 30th day following the date on which the notice is served, but may not sue on the bond later than one year after the date on which the notice is served.

"(b) The bond is not exhausted by one action against it. Each named obligee or assignee of an obligee may maintain a separate suit on the bond in any court of jurisdiction. (V.A.C.S. Art. 5472c, Sec. 4 (part).)

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"Section 53.176. ATTORNEY'S FEES. A lienholder who recovers in a suit on the lien or on the bond is entitled to also recover a reasonable attorney's fee. (V.A.C.S. Art. 5472c, Sec. 4a.)

"[Sections 53.177-53.200 reserved for expansion]

"SUBCHAPTER I. BOND TO PAY LIENS OR CLAIMS

"Section 53.201. BOND. (a) An original contractor who has a written contract with the owner may furnish a bond for the benefit of claimants.

"(b) If a valid bond is filed, a claimant may not file suit against the owner or the owner's property and the owner is relieved of obligations under Subchapter D or E. (V.A.C.S. Art. 5472d, Secs. 1 (part), 7 (part).)

"Section 53.202. BOND REQUIREMENTS. The bond must:

"(1) be in a penal sum at least equal to the total of the original contract amount;

"(2) be in favor of the owner;

"(3) have the written approval of the owner endorsed on it;

"(4) be executed by:

"(A) the original contractor as principal; and

"(B) a corporate surety authorized to do business in this state; and

"(5) be conditioned on prompt payment for all labor, subcontracts, materials, specially fabricated materials, and normal and usual extras not exceeding 15 percent of the contract price. (V.A.C.S. Art. 5472d, Secs. 1 (part), 2 (part).)

"Section 53.203. RECORDING OF BOND AND CONTRACT. (a) The bond and the contract between the original contractor and the owner shall be filed with the county clerk of the county in which is located all or part of the owner's property on which the construction or repair is to be performed. A copy of the contract may be substituted for the original.

"(b) The plans, specifications, and general conditions of the contract are not required to be filed.

"(c) The county clerk shall record the bond and place the contract on file in the clerk's office and shall index and

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cross-index both in the names of the original contractor and the owner in records kept for that purpose.

"(d) On request and payment of a reasonable fee, the county clerk shall furnish a copy of the bond and contract to any person.

"(e) In any court of this state or in the United States, a copy of the bond and contract certified by the county clerk constitutes prima facie evidence of the contents, execution, delivery, and filing of the originals. (V.A.C.S. Art. 5472d, Secs. 1 (part), 2 (part), 3.)

"Section 53.204. RELIANCE ON RECORD. A purchaser, lender, or other person acquiring an interest in the owner's property is entitled to rely on the record of the bond and contract as constituting payment of all claims and liens for labor, subcontracts, materials, or specially fabricated materials as if he were the owner who approved, accepted, and endorsed the bond. (V.A.C.S. Art. 5472d, Sec. 7 (part).)

"Section 53.205. ENFORCEABLE CLAIMS. (a) The bond protects all persons with a claim that is:

"(1) perfected in the manner prescribed for fixing a lien under Subchapter C; or

"(2) perfected in the manner prescribed by Section 53.206.

"(b) A claim or the rights to a claim under the bond may be assigned. (V.A.C.S. Art. 5472d, Sec. 1 (part).)

"Section 53.206. PERFECTION OF CLAIM. (a) To perfect a claim against a bond in a manner other than that prescribed by Subchapter C for fixing a lien, a person must:

"(1) give to the original contractor all applicable notices under that subchapter; and

"(2) give to the surety on the bond, instead of the owner, all notices under that subchapter required to be given to the owner.

"(b) To perfect a claim under this section, a person is not required to:

"(1) give notice to the surety under Section 53.057, unless the claimant has a direct contractual relationship with the

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original contractor and the agreed retainage is in excess of 10 percent of the contract;

"(2) give notice to the surety under Subsection (b) of Section 53.058; or

"(3) file claim with the county clerk or accompany any claim or notice with an affidavit.

"(c) For the claim to be valid, a person must give notice in the time and manner required by this section, but the content of the notices need only provide fair notice of the amount and the nature of the claim asserted. (V.A.C.S. Art. 5472d, Sec. 4.)

"Section 53.207. OWNER'S NOTICE OF CLAIM TO SURETY. (a) If the owner receives any of the notices or a lien is fixed under Subchapter C, the owner shall mail to the surety on the bond a copy of all notices received.

"(b) Failure of the owner to send copies of notices to the surety does not relieve the surety of any liability under the bond if the claimant has complied with the requirements of this subchapter, nor does that failure impose any liability on the owner. (V.A.C.S. Art. 5472d, Sec. 5.)

"Section 53.208. ACTION ON BOND. (a) A claimant may sue the principal and surety on the bond either jointly or severally, if his claim remains unpaid for 60 days after the claimant perfects the claim.

"(b) The claimant may sue for the amount of the claim and court costs.

"(c) The suit must be brought in the county in which the bond was recorded.

"(d) The claimant must sue on the bond within 14 months following perfection of his claim. (V.A.C.S. Art. 5472d, Sec. 6 (part).)

"Section 53.209. ATTORNEY'S FEES. A claimant who recovers on the bond may also recover reasonable attorney's fees. (V.A.C.S. Art. 5472d, Sec. 6 (part).)

"Section 53.210. CLAIMS IN EXCESS OF BOND AMOUNT. If valid claims against the bond exceed the penal sum of the bond, each

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claimant is entitled to a pro rata share of the penal sum.
(V.A.C.S. Art. 5472d, Sec. 7 (part).)

"Section 53.211. ATTEMPTED COMPLIANCE. A bond shall be construed to comply with this subchapter, and the rights and remedies on the bond are enforceable in the same manner as on other bonds under this subchapter, if the bond:

"(1) is furnished and filed in attempted compliance with this subchapter; or

"(2) evidences by its terms intent to comply with this subchapter. (V.A.C.S. Art. 5472d, Sec. 8.)

"[Sections 53.212-53.230 reserved for expansion]

SUBCHAPTER J. LIEN ON MONEY DUE PUBLIC WORKS CONTRACTOR

"Section 53.231. LIEN. A person who furnishes material or labor to a contractor under a prime contract that does not exceed \$25,000 and that is for public improvements in this state and who gives notice required by this subchapter has a lien on the money, bonds, or warrants due the contractor for the improvements.
(V.A.C.S. Art. 5472a (part).)

"Section 53.232. TO WHOM NOTICE GIVEN; MANNER. The lien claimant must send written notice of his claim by registered or certified mail to:

"(1) the officials of the state, county, town, or municipality whose duty it is to pay the contractor; and

"(2) the contractor at the contractor's last known business or residence address. (V.A.C.S. Art. 5472a (part).)

"Section 53.233. CONTENTS OF NOTICE. (a) Whether based on written or oral agreement, the notice must contain:

"(1) the amount claimed;

"(2) the name of the party to whom the materials were delivered or for whom the labor was performed;

"(3) the dates and place of delivery or performance;

"(4) a description reasonably sufficient to identify the materials delivered or labor performed and the amount due; and

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"(5) a description reasonably sufficient to identify the project for which the material was delivered or the labor performed.

"(b) The notice must be accompanied by a statement under oath that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed. (V.A.C.S. Art. 5472a (part).)

"Section 53.234. TIME FOR NOTICE. The lien claimant must give notice before any payment is made to the contractor and not later than the 30th day after the 10th of the month following the month in which the labor was performed or the material furnished. (V.A.C.S. Art. 5472a (part).)

"Section 53.235. OFFICIAL TO RETAIN FUNDS. A public official who receives the notice may not pay all of the money, bonds, or warrants due the contractor, but shall retain enough to pay the claim for which notice is given. (V.A.C.S. Art. 5472b.)

"Section 53.236. BOND FOR RELEASE OF LIEN. (a) If a claim is filed attempting to fix a lien under this subchapter, the contractor against whom the claim is made may file a bond with the officials of the state, county, town, or municipality whose duty it is to pay the money, bonds, or warrants to the contractor.

"(b) If the bond is approved by the proper official, its filing releases and discharges all liens fixed or attempted to be fixed by the filing of a claim, and the appropriate officials shall pay the money, bonds, or warrants to the contractor or the contractor's assignee. (V.A.C.S. Art. 5472b-1, Sec. 1 (part).)

"Section 53.237. BOND REQUIREMENTS. The bond must be:

"(1) in an amount double the amount of the claims filed;

"(2) payable to the claimants;

"(3) executed by:

"(A) the party filing the bond as principal; and

"(B) a corporate surety authorized by the law of this state to execute the bond as surety; and

"(4) conditioned that:

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"(A) the principal and surety will pay to the obligees named or to their assignees the amount of the claims or the portions of the claims proved to be liens under this subchapter; and

"(B) the principal and surety will pay all court costs adjudged against the principal in actions brought by a claimant on the bond. (V.A.C.S. Art. 5472b-1, Secs. 1 (part), 2 (part).)

"Section 53.238. NOTICE OF BOND. The official with whom the bond is filed shall send an exact copy of the bond by registered mail or certified mail, return receipt requested, to all claimants. (V.A.C.S. Art. 5472b-1, Sec. 1 (part).)

"Section 53.239. ACTION ON BOND. (a) A claimant must sue on the bond within six months after the bond is filed.

"(b, The bond is not exhausted by one action on it. Each obligee or his assignee may maintain a separate suit on the bond in any court of jurisdiction. (V.A.C.S. Art. 5472b-1 Sec. 2 (part).)

"Section 53.240. ATTORNEY'S FEES. If in a suit on the bond a claimant establishes that he was entitled to a lien under this subchapter and recovers judgment for the full amount of his claim, the court shall fix a reasonable attorney's fee in favor of the claimant and tax that fee as part of the costs in the case. (V.A.C.S. Art. 5472b-1, Sec. 2 (part).)

"CHAPTER 54. LANDLORD'S LIENS

"SUBCHAPTER A. AGRICULTURAL LANDLORD'S LIEN

"Section 54.001. LIEN

"Section 54.002. PROPERTY TO WHICH LIEN ATTACHES

"Section 54.003. EXCEPTIONS

"Section 54.004. DURATION OF LIEN

"Section 54.005. REMOVAL OF PROPERTY

"Section 54.006. DISTRESS WARRANT

"Section 54.007. JUDGMENT ON REPLEVIN BOND

"[Sections 54.008-54.020 reserved for expansion]

"SUBCHAPTER B. BUILDING LANDLORD'S LIEN

"Section 54.021. LIEN

"Section 54.022. COMMERCIAL BUILDING

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"Section 54.023. EXEMPTIONS

"Section 54.024. DURATION OF LIEN

"Section 54.025. DISTRESS WARRANT

"[Sections 54.026-54.040 reserved for expansion]

"SUBCHAPTER C. RESIDENTIAL LANDLORD'S LIEN

"Section 54.041. LIEN

"Section 54.042. EXEMPTIONS

"Section 54.043. ENFORCEABILITY OF CONTRACTUAL PROVISIONS

"Section 54.044. SEIZURE OF PROPERTY

"Section 54.045. VIOLATION BY LANDLORD

"CHAPTER 54. LANDLORD'S LIENS

"SUBCHAPTER A. AGRICULTURAL LANDLORD'S LIEN

"Section 54.001. LIEN. A person who leases land or tenements at will or for a term of years has a preference lien for rent that becomes due and for the money and the value of property that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises and to gather, store, and prepare the crop for marketing. (V.A.C.S. Art. 5222 (part).)

"Section 54.002. PROPERTY TO WHICH LIEN ATTACHES. (a) Except as provided by Subsections (b) and (c), the lien attaches to:

"(1) the property on the leased premises that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises; and

"(2) the crop grown on the leased premises in the year that the rent accrues or the property is furnished.

"(b) If the landlord provides everything except labor, the lien attaches only to the crop grown in the year that the property is furnished.

"(c) The lien does not attach to the goods of a merchant, trader, or mechanic if the tenant sells and delivers the goods in good faith in the regular course of business.

"(d) A law exempting property from forced sale does not apply to a lien under this subchapter on agricultural products,

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animals, or tools. (V.A.C.S. Arts. 5222 (part), 5223 (part), 5224.)

"Section 54.003. EXCEPTIONS. The lien does not arise if:

"(1) a tenant provides everything necessary to cultivate the leased premises and the landlord charges rent of more than one-third of the value of the grain and one-fourth of the value of the cotton grown on the premises; or

"(2) a landlord provides everything except the labor and directly or indirectly charges rent of more than one-half of the value of the grain and cotton grown on the premises. (V.A.C.S. Art. 5222 (part).)

"Section 54.004. DURATION OF LIEN. The lien exists while the property to which it is attached remains on the leased premises and until one month after the day that the property is removed from the premises. If agricultural products to which the lien is attached are placed in a public or bonded warehouse regulated by state law before the 31st day after the day that they are removed from the leased premises, the lien exists while they remain in the warehouse. (V.A.C.S. Art. 5223 (part).)

"Section 54.005. REMOVAL OF PROPERTY. (a) If an advance or rent is unpaid, a tenant may not without the landlord's consent remove or permit the removal of agricultural products or other property to which the lien is attached from the leased premises.

"(b) If agricultural products subject to the lien are removed with the landlord's consent from the leased premises for preparation for market, the lien continues to exist as if the products had not been removed. (V A.C.S Arts. 5225, 5226.)

"Section 54.006. DISTRESS WARRANT. (a) The person to whom rent or an advance is payable under the lease may apply to an appropriate justice of the peace for a distress warrant if the tenant:

"(1) owes any rent or an advance;

"(2) is about to abandon the premises; or

"(3) is about to remove the tenant's property from the premises.

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"(b) The application for a warrant must be filed with a justice of the peace:

"(1) in the precinct in which the leasehold is located or in which the property subject to the landlord's lien is located; or

"(2) who has jurisdiction of the cause of action. (V.A.C.S. Art. 5227.)

"Section 54.007. JUDGMENT ON REPLEVIN BOND. If a final judgment is rendered against a defendant who has replevied property seized under a distress warrant, the sureties on the defendant's replevy bond are also liable under the judgment, according to the terms of the bond. (V.A.C.S. Art. 5232.)

"[Sections 54.008-54.020 reserved for expansion]

"SUBCHAPTER B. BUILDING LANDLORD'S LIEN

"Section 54.021. LIEN. A person who leases a building has a preference lien on the property of the tenant or subtenant in the building for rent that is due and for rent that is to become due during the current 12-month period succeeding the date of the beginning of the rental agreement or an anniversary of that date. (V.A.C.S. Art. 5238 (part).)

"Section 54.022. COMMERCIAL BUILDING. (a) The lien is unenforceable for rent on a commercial building that is more than six months past due unless the landlord files a lien statement with the county clerk of the county in which the building is located.

"(b) The lien statement must be verified by the landlord or the landlord's agent or attorney and must contain:

"(1) an account, itemized by month, of the rent for which the lien is claimed;

"(2) the name and address of the tenant or subtenant, if any,

"(3) a description of the leased premises; and

"(4) the beginning and termination dates of the lease.

"(c) Each county clerk shall index alphabetically and record the rental lien statements filed in the clerk's office. (V.A.C.S. Art. 5238 (part).)

Additions in text indicated by underline; deletions by ~~strikeouts~~

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"Section 54.023. EXEMPTIONS. This subchapter does not affect a statute exempting property from forced sale. (V.A.C.S. Art. 5238 (part).)

"Section 54.024. DURATION OF LIEN. The lien exists while the tenant occupies the building and until one month after the day that the tenant abandons the building. (V.A.C.S. Art. 5238 (part).)

"Section 54.025. DISTRESS WARRANT. The person to whom rent is payable under a building lease may apply to the justice of the peace in the precinct in which the building is located for a distress warrant if the tenant:

"(1) owes rent;

"(2) is about to abandon the building; or

"(3) is about to remove the tenant's property from the building. (V.A.C.S. Art. 5239.)

"[Sections 54.026-54.040 reserved for expansion]

"SUBCHAPTER C. RESIDENTIAL LANDLORD'S LIEN

"Section 54.041. LIEN. A landlord of a single or multifamily residence has a lien for unpaid rent that is due. The lien attaches to nonexempt property that is in the residence or that the tenant has stored in a storage room. (V.A.C.S. Art. 5236d, Sec. 1.)

"Section 54.042. EXEMPTIONS. A lien under this subchapter does not attach to:

"(1) wearing apparel;

"(2) tools, apparatus, and books of a trade or profession;

"(3) schoolbooks;

"(4) a family library;

"(5) family portraits and pictures;

"(6) one couch, two living room chairs, and a dining table and chairs;

"(7) beds and bedding;

"(8) kitchen furniture and utensils;

"(9) food and foodstuffs;

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"(10) medicine and medical supplies;

"(11) one automobile and one truck;

"(12) agricultural implements;

"(13) goods that the landlord or the landlord's agent knows are owned by a person other than the tenant or an occupant of the residence; and

"(14) goods that the landlord or the landlord's agent knows are subject to a recorded chattel mortgage or financing agreement. (V.A.C.S. Art. 5236d, Sec. 2.)

"Section 54.043. ENFORCEABILITY OF CONTRACTUAL PROVISIONS.

(a) A contractual landlord's lien is not enforceable unless it is underlined or printed in conspicuous bold print in the lease agreement.

"(b) A provision of a lease that purports to waive or diminish a right, liability, or exemption of this subchapter is void to the extent limited by this subchapter. (V.A.C.S. Art. 5236d, Secs. 3, 4.)

"Section 54.044. SEIZURE OF PROPERTY. (a) The landlord or the landlord's agent may not seize exempt property and may seize nonexempt property only under a written lease agreement.

"(b) If the tenant has abandoned the residence, the landlord or the landlord's agent may remove its contents. (V.A.C.S. Art. 5236d, Secs. 5, 6.)

"Section 54.045. VIOLATION BY LANDLORD. If a landlord or the landlord's agent wilfully violates this subchapter, the tenant is entitled to actual damages, one month's rent, and reasonable attorney's fees, less any amount for which the tenant is liable. (V.A.C.S. Art. 5236d, Sec. 7.)

"CHAPTER 55. HOSPITAL LIEN

"Section 55.001. DEFINITIONS

"Section 55.002. LIEN

"Section 55.003. PROPERTY TO WHICH LIEN ATTACHES

"Section 55.004. AMOUNT OF LIEN

"Section 55.005. SECURING LIEN

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"Section 55.006. DISCHARGE OF LIEN

"Section 55.007. VALIDITY OF RELEASE

"Section 55.008. HOSPITAL RECORDS

"CHAPTER 55. HOSPITAL LIEN

"Section 55.001. DEFINITIONS. In this chapter:

"(1) 'Hospital' means a person or institution maintaining a facility that provides hospital services in this state.

"(2) 'Person' does not include a county, common, or independent school district. (V.A.C.S. Art. 5506a, Secs. 1 (part), 4 (part).)

"Section 55.002. LIEN. (a) A hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must be admitted to a hospital not later than 72 hours after the accident.

"(b) The lien extends to both the admitting hospital and a hospital to which the individual is transferred for treatment of the same injury. (V.A.C.S. Art. 5506a, Sec. 1 (part).)

"Section 55.003. PROPERTY TO WHICH LIEN ATTACHES. (a) The lien attaches to:

"(1) a cause of action for damages arising from an injury for which the injured individual is admitted to the hospital;

"(2) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the injured individual or by another person entitled to bring the suit in case of the death of the individual to recover damages arising from an injury for which the injured individual is admitted to the hospital; and

"(3) the proceeds of a settlement of a cause of action or a claim by the injured individual or another person entitled to make the claim, arising from an injury for which the injured individual is admitted to the hospital.

"(b) The lien does not attach to:

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"(1) a claim under the workers' compensation law of this state, the Federal Employees Liability Act, or the Federal Longshoremen's or Harbor Workers' Compensation Act;

"(2) a claim against the owner or operator of a railroad company that maintains or whose employees maintain a hospital in which the injured individual is receiving hospital services; or

"(3) the proceeds of an insurance policy in favor of the injured individual or the injured individual's beneficiary or legal representative, except public liability insurance carried by the insured that protects the insured against loss caused by an accident or collision. (V.A.C.S. Art. 5506a, Secs. 1 (part), 2, 3 (part), 4c.)

"Section 55.004. AMOUNT OF LIEN. (a) The lien is for the amount of the hospital's charges for services provided to the injured individual during the first 100 days of the injured individual's hospitalization, except that the lien does not cover:

"(1) charges for operating costs that exceed the cost limits established under Section 405.460, 42 Code of Federal Regulations; or

"(2) charges for other services that exceed a reasonable and regular rate for the services.

"(b) The lien is not affected by a hospital's use of a method of classifying patients according to their ability to pay that is solely intended to obtain a lien for services provided to an indigent injured individual. (V.A.C.S. Art. 5506a, Secs. 1 (part), 3 (part).)

"Section 55.005. SECURING LIEN. (a) To secure the lien, a hospital must file written notice of the lien with the county clerk of the county in which the injury occurred. The notice must be filed before money is paid to an entitled person because of the injury.

"(b) The notice must contain:

"(1) the injured individual's name and address;

"(2) the date of the accident;

"(3) the name and location of the hospital; and

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"(4) the name of the person alleged to be liable for damages arising from the injury, if known.

"(c) The county clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital and shall index the record in the name of the injured individual. (V.A.C.S. Art. 5506a, Secs. 3 (part), 4 (part).)

"Section 55.006. DISCHARGE OF LIEN. (a) To discharge the lien, the hospital authorities or the person in charge of the finances of the hospital must execute and file with the county clerk of the county in which the lien notice was filed a certificate stating that the debt covered by the lien has been paid or released and authorizing the clerk to discharge the lien.

"(b) The county clerk shall record a memorandum of the certificate and the date it was filed.

"(c) The filing of the certificate and recording of the memorandum discharge the lien. (V.A.C.S. Art. 5506a, Sec. 4b.)

"Section 55.007. VALIDITY OF RELEASE. (a) A release of a cause of action or judgment to which the lien may attach is not valid unless:

"(1) the hospital's charges were paid in full before the execution and delivery of the release;

"(2) the hospital's charges were paid before the execution and delivery of the release to the extent of any full and true consideration paid to the injured individual by or on behalf of the other parties to the release; or

"(3) the hospital is a party to the release.

"(b) A judgment to which the lien has attached remains in effect until the hospital's charges are paid in full or to the extent set out in the judgment. (V.A.C.S. Art. 5506a, Sec. 3 (part).)

"Section 55.008. HOSPITAL RECORDS. (a) On request by an attorney for a party by, for, or against whom a claim is asserted for damages arising from an injury, a hospital shall as promptly as possible make available for the attorney's examination its records concerning the services provided to the injured individual.

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"(b) The hospital may issue reasonable rules for granting access to its records under this section, but it may not deny access because a record is incomplete.

"(c) The records are admissible, subject to applicable rules of evidence, in a civil suit arising from the injury. (V.A.C.S. Art. 5506a, Sec. 4a.)

"CHAPTER 56. LIENS AGAINST MINERAL PROPERTY

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 56.001. DEFINITIONS

"Section 56.002. LIEN

"Section 56.003. PROPERTY SUBJECT TO LIEN

"Section 56.004. PRIORITY

"Section 56.005. ACCRUAL OF INDEBTEDNESS

"Section 56.006. LIABILITY OF OWNER

"[Sections 56.007-56.020 reserved for expansion]

"SUBCHAPTER B. SECURING LIEN

"Section 56.021. SECURING LIEN

"Section 56.022. CONTENTS OF AFFIDAVIT

"Section 56.023. CONTENTS OF MINERAL SUBCONTRACTOR'S NOTICE

"Section 56.024. FILING IN NEW COUNTY

"[Sections 56.025-56.040 reserved for expansion]

"SUBCHAPTER C. ENFORCEMENT

"Section 56.041. ENFORCEMENT

"Section 56.042. SALE OR REMOVAL OF PROPERTY

"Section 56.043. RETENTION OF PAYMENT

"Section 56.044. FORFEITURE OF LEASEHOLD

"Section 56.045. EQUITABLE OR CONTINGENT INTEREST

"CHAPTER 56. LIENS AGAINST MINERAL PROPERTY

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 56.001. DEFINITIONS. In this chapter:

"(1) 'Mineral activities' means digging, drilling, torpedoeing, operating, completing, maintaining, or repairing an oil, gas, or water well, an oil or gas pipeline, or a mine or quarry.

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"(2) 'Mineral contractor' means a person who performs labor or furnishes or hauls material, machinery, or supplies used in mineral activities under an express or implied contract with a mineral property owner or with a trustee, agent, or receiver of a mineral property owner.

"(3) 'Mineral property owner' means an owner of land, an oil, gas, or other mineral leasehold, an oil or gas pipeline, or an oil or gas pipeline right-of-way.

"(4) 'Mineral subcontractor' means a person who:

"(A) furnishes or hauls material, machinery, or supplies used in mineral activities under contract with a mineral contractor or with a subcontractor;

"(B) performs labor used in mineral activities under contract with a mineral contractor; or

"(C) performs labor used in mineral activities as an artisan or day laborer employed by a subcontractor. (V.A.C.S. Arts. 5473 (part), 5474 (part).)

"Section 56.002. LIEN. A mineral contractor or subcontractor has a lien to secure payment for labor or services related to the mineral activities. (V.A.C.S. Arts. 5473 (part), 5474 (part).)

"Section 56.003. PROPERTY SUBJECT TO LIEN. (a) The following property is subject to the lien:

"(1) the material, machinery, and supplies furnished or hauled by the lien claimant;

"(2) the land, leasehold, oil or gas well, water well, oil or gas pipeline and its right-of-way, and lease for oil and gas purposes for which the labor was performed or material, machinery, or supplies were furnished or hauled, and the buildings and appurtenances on this property;

"(3) other material, machinery, and supplies used for mineral activities and owned by the owner of the property listed in Subdivision (2); and

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"(4) other wells and pipelines used in operations related to oil, gas, and minerals and located on property listed in Subdivision (2).

"(b) A lien created by performing labor or furnishing or hauling material, machinery, or supplies for a leaseholder does not attach to the fee title to the property. (V.A.C.S. Art. 5473 (part).)

"Section 56.004. PRIORITY. (a) The lien does not affect an encumbrance that attached to land or a leasehold before the lien's inception.

"(b) The lien on material, machinery, supplies, or a specific improvement takes priority over an earlier encumbrance on the land or leasehold on which the material, machinery, supplies, or improvement is placed or located. (V.A.C.S. Art. 5475 (part).)

"Section 56.005. ACCRUAL OF INDEBTEDNESS. (a) The indebtedness for labor performed by the day or week accrues at the end of each week during which the labor is performed.

"(b) The indebtedness for material or services accrues on the date the material or services were last furnished. All material or services that a person furnishes for the same land, leasehold interest, oil or gas pipeline, or oil or gas pipeline right-of-way are considered to be furnished under a single contract unless more than six months elapse between the dates the material or services are furnished. (V.A.C.S. Art. 5476b.)

"Section 56.006. LIABILITY OF OWNER. An owner of land or a leasehold may not be subjected to liability under this chapter greater than the amount agreed to be paid in the contract for furnishing material or performing labor. (V.A.C.S. Art. 5478.)

"[Sections 56.007-56.020 reserved for expansion]

"SUBCHAPTER B. SECURING LIEN

"Section 56.021. SECURING LIEN. (a) Not later than six months after the day the indebtedness accrues, a person claiming the lien must file an affidavit with the county clerk of the county in which the property is located.

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"(b) Not later than the 10th day before the day the affidavit is filed, a mineral subcontractor claiming the lien must serve on the property owner written notice that the lien is claimed. (V.A.C.S. Arts. 5476a (part), 5476c (part).)

"Section 56.022. CONTENTS OF AFFIDAVIT. (a) A lien claimant's affidavit must include:

"(1) the name of the mineral property owner involved, if known;

"(2) the name and mailing address of the claimant;

"(3) the dates of performance or furnishing;

"(4) a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved; and

"(5) an itemized list of amounts claimed.

"(b) A mineral subcontractor's affidavit must in addition include:

"(1) the name of the person for whom labor was performed or material was furnished or hauled; and

"(2) a statement that the subcontractor timely served written notice that the lien is claimed on the property owner or the owner's agent, representative, or receiver. (V.A.C.S. Art. 5476a (part).)

"Section 56.023. CONTENTS OF MINERAL SUBCONTRACTOR'S NOTICE. A mineral subcontractor's notice to the property owner must include the amount of the lien, the name of the person indebted to the subcontractor, and a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved. (V.A.C.S. Art. 5476c (part).)

"Section 56.024. FILING IN NEW COUNTY. (a) Not later than the 90th day after the day that property to which the lien has attached is removed from a county in which the lien affidavit covering the property has been filed, the lienholder may file with the clerk of the county to which the property has been moved an itemized inventory of the property showing the unpaid amount due.

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"(b) The lien attaches to all property subject to the lien located in a county in which an inventory is filed under this section.

"(c) An inventory filed under this section is notice of the lien's existence. (V.A.C.S. Art. 5476 (part).)

"[Sections 56.025-56.040 reserved for expansion]

"SUBCHAPTER C. ENFORCEMENT

"Section 56.041. ENFORCEMENT. (a) A claimant must enforce the lien within the same time and in the same manner as a mechanic's, contractor's, or materialman's lien under Chapter 53.

"(b) A holder of a prior encumbrance on land or a leasehold is not a necessary party to a suit to foreclose the lien. (V.A.C.S. Arts. 5475 (part), 5476 (part).)

"Section 56.042. SALE OR REMOVAL OF PROPERTY. (a) A mineral property owner, contractor, subcontractor, or purchaser or an agent, trustee, or receiver of one of those persons may not sell property to which the lien has attached or remove it from the land on which it was to be used, unless the lienholder consents in writing.

"(b) On a violation of this section, a lienholder is entitled to possession of the property regardless of where it is found, and the lienholder may have the property sold to satisfy the debt on which the lien is based regardless of whether the debt is due. (V.A.C.S. Art. 5477.)

"Section 56.043. RETENTION OF PAYMENT. A property owner who is served with a mineral subcontractor's notice may withhold payment to the contractor in the amount claimed until the debt on which the lien is based is settled or determined to be not owed. The owner is not liable to the subcontractor for more than the amount that the owner owes the original contractor when the notice is received. (V.A.C.S. Art. 5476c (part).)

"Section 56.044. FORFEITURE OF LEASEHOLD. Forfeiture of a leasehold does not impair a lien on material, machinery, supplies, or an improvement located on the leasehold if:

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"(1) the lien attached to the property before the leasehold was forfeited;

"(2) the property is not permanently attached to the land;
and

"(3) the lienholder pays the owner of the land the damages caused to the land by removal of the property. (V.A.C.S. Art. 5476d (part).)

"Section 56.045. EQUITABLE OR CONTINGENT INTEREST. Failure of an equitable interest to become legal title or nonfulfillment of a condition subsequent on which a legal interest is contingent does not impair a lien on material, machinery, supplies, or an improvement located on the land covered by the equitable interest if the lien attached to the material, machinery, supplies, or improvement before the failure. (V.A.C.S. Art. 5476d (part).)

"CHAPTER 57. RAILROAD LABORER'S LIEN

"Section 57.001 RAILROAD LABORER'S LIEN

"Section 57.002. PRIORITY

"Section 57.003. DURATION OF LIEN

"Section 57.004. ENFORCEMENT

"Section 57.005. VENUE

"Section 57.006. PARTIES

"CHAPTER 57. RAILROAD LABORER'S LIEN

"Section 57.001. RAILROAD LABORER'S LIEN. A mechanic, laborer, or other person who works or uses tools or a team in the construction, operation, or repair of a railroad or railroad equipment has a lien on the railroad and equipment for the amount owed for the labor or the use of the tools or team. (V.A.C.S. Art. 5480 (part).)

"Section 57.002. PRIORITY. A lien under this chapter takes priority over all other liens on the same property. (V.A.C.S. Art. 5480 (part).)

"Section 57.003. DURATION OF LIEN. A lien under this chapter ceases to exist 12 months after the day that it is created, unless the lien claimant has sued to foreclose the lien. (V.A.C.S. Art. 5480 (part).)

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"Section 57.004. ENFORCEMENT. A court in a suit to foreclose the lien shall render judgment for the amount due and order to be sold as much of the railroad right-of-way and equipment as is necessary to satisfy the judgment only if:

"(1) the work was performed at the instance of the railroad company or the company's agent, contractor, or subcontractor; and

"(2) the amount claimed is due. (V.A.C.S. Art. 5481 (part).)

"Section 57.005. VENUE. A suit to foreclose a lien under this chapter may be brought in a county in which:

"(1) the work was performed or any part of the cause of action accrued; or

"(2) the principal office of the railroad company is located. (V.A.C.S. Art. 5482.)

"Section 57.006. PARTIES. Holders of other liens on the same property are not necessary parties to a suit to foreclose a lien under this chapter but may intervene in the suit. (V.A.C.S. Art. 5481 (part).)

"CHAPTER 58. FARM, FACTORY, AND STORE WORKER'S LIENS

"Section 58.001. DEFINITIONS

"Section 58.002. LIEN

"Section 58.003. PROPERTY SUBJECT TO LIEN

"Section 58.004. SECURING LIEN

"Section 58.005. PRIORITY

"Section 58.006. DURATION OF LIEN

"Section 58.007. PURCHASE OF PROPERTY TO WHICH LIEN HAS ATTACHED

"Section 58.008. ASSIGNMENT OF LIEN

"Section 58.009. PAYMENT OF WAGES

"CHAPTER 58. FARM, FACTORY, AND STORE WORKER'S LIENS

"Section 58.001. DEFINITIONS. In this chapter:

"(1) 'Employer' means a person with whom a worker contracts, directly or through an agent, receiver, or trustee of the person, for the performance of labor or a service by the worker. The contract may be oral or in writing.

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"(2) 'Worker' means a clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, artisan, craftsman, factory operator, mill operator, mechanic, quarry worker, common laborer, or farmhand. (V.A.C.S. Art. 5483 (part).)

"Section 58.002. LIEN. (a) A worker has a lien as provided by this chapter if, under the contract with the employer, the worker:

"(1) labors or performs a service in an office, store, hotel, rooming house or boardinghouse, restaurant, shop, factory, mine, quarry, or mill or on a farm; or

"(2) performs a service:

"(A) in cutting, preparing, hauling, or transporting logs or timber to a place of disposition;

"(B) on a means of transportation of logs or timber; or

"(C) in constructing or maintaining a tram or railroad constructed or used for transporting logs or timber to their owner or a point of disposition.

"(b) The amount of the lien is the amount owed under the contract. (V.A.C.S. Art. 5483 (part).)

"Section 58.003. PROPERTY SUBJECT TO LIEN. Each thing of value owned by or in the possession or control of the employer or the employer's agent, receiver, or trustee is subject to the lien if:

"(1) created in whole or part by the lien claimant's work;

"(2) used by or useful to the lien claimant in the performance of the work; or

"(3) necessarily connected with the performance of the work. (V.A.C.S. Art. 5483 (part).)

"Section 58.004. SECURING LIEN. (a) Not later than the 30th day after the day that the indebtedness accrues, a worker who has not received payment for work performed and who wishes to claim the lien must:

"(1) serve a copy of an account of the services, stating the amount due, on the employer or the employer's agent, receiver, or trustee; and

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"(2) file a copy of the account with the county clerk of the county in which the services were performed.

"(b) The party making an account must execute an affidavit verifying the contents of the account.

"(c) Substantial compliance with this section secures the lien. (V.A.C.S. Art. 5486 (part).)

"Section 58.005. PRIORITY. (a) A lien under this chapter is a first lien, except that a farmhand's lien is subordinate to a landlord's lien provided by law.

"(b) Liens under this chapter take priority in the order that the accounts are filed with the county clerk. (V.A.C.S. Arts. 5483 (part), 5486 (part).)

"Section 58.006. DURATION OF LIEN. The lien ceases to exist six months after the day that it is secured unless the lien claimant has sued to foreclose the lien. (V.A.C.S. Arts. 5486 (part), 5488.)

"Section 58.007. PURCHASE OF PROPERTY TO WHICH LIEN HAS ATTACHED. (a) A person who purchases from its owner property to which the lien has attached and who has no actual or constructive notice of the lien takes the property free from the lien.

"(b) An account filed with the county clerk under this chapter or a suit to foreclose a lien is constructive notice of the lien's existence. (V.A.C.S. Art. 5486 (part))

"Section 58.008. ASSIGNMENT OF LIEN. The lien may be assigned. An assignee receives the rights and privileges held by the assignor under the lien. (V.A.C.S. Art. 5487.)

"Section 58.009. PAYMENT OF WAGES. For purposes of this chapter, wages are due weekly for work performed by the day or week and monthly for work performed by the month, and an employer shall pay wages in United States legal tender. (V.A.C.S. Art. 5485.)

"CHAPTER 59. SELF-SERVICE STORAGE FACILITY LIENS

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 59.001. DEFINITIONS

"Section 59.002. APPLICABILITY

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"Section 59.003. APPLICABILITY OF OTHER STATUTES

"Section 59.004. VARIATION BY AGREEMENT AND WAIVER

"Section 59.005. DAMAGES FOR VIOLATION

"Section 59.006. ATTACHMENT AND PRIORITY OF LIEN

"Section 59.007. PURCHASE OF PROPERTY

"Section 59.008. REDEMPTION

"Section 59.009. RESIDENTIAL USE

 "[Sections 59.010-59.020 reserved for expansion]

 "SUBCHAPTER B. STATUTORY LIEN

"Section 59.021. STATUTORY LIEN

"Section 59.022. ENFORCEMENT OF STATUTORY LIEN

 "[Sections 59.023-59.040 reserved for expansion]

 "SUBCHAPTER C. CONTRACTUAL LANDLORD'S LIEN

"Section 59.041. ENFORCEMENT OF CONTRACTUAL LANDLORD'S LIEN

"Section 59.042. PROCEDURE FOR SEIZURE AND SALE

"Section 59.043. CONTENTS AND DELIVERY OF NOTICE OF CLAIM

"Section 59.044. NOTICE OF SALE

"Section 59.045. CONDUCT OF SALE

"Section 59.046. EXCESS PROCEEDS OF SALE

 "CHAPTER 59. SELF-SERVICE STORAGE FACILITY LIENS

 "SUBCHAPTER A. GENERAL PROVISIONS

 "Section 59.001. DEFINITIONS. In this chapter:

 "(1) 'Lessor' means an owner, lessor, sublessor, or managing agent of a self-service storage facility.

 "(2) 'Rental agreement' means a written or oral agreement that establishes or modifies the terms of use of a self-service storage facility.

 "(3) 'Self-service storage facility' means real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant.

 "(4) 'Tenant' means a person entitled under a rental agreement to the exclusive use of storage space at a self-service storage facility. (V.A.C.S. Art. 5238b, Sec. 3 (part).)

 "Section 59.002. APPLICABILITY. This chapter applies to a self-service storage facility rental agreement that is entered
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into, extended, or renewed after September 1, 1981. (V.A.C.S. Art. 5238b, Sec. 1.)

"Section 59.003. APPLICABILITY OF OTHER STATUTES. (a) Subchapter B, Chapter 54, does not apply to a self-service storage facility.

"(b) Unless a lessor issues a warehouse receipt, bill of lading, or other document of title relating to property stored at the facility, the following statutes do not apply to a self-service storage facility:

"(1) Chapter 7, Business & Commerce Code, as amended;

"(2) Subchapter A, Chapter 14, Agriculture Code, as amended;

and

"(3) Sections 14.201, 14.204 through 14.214, and 14.216, Agriculture Code. (V.A.C.S. Art. 5238b, Sec. 2.)

"Section 59.004. VARIATION BY AGREEMENT AND WAIVER. Except as expressly provided by this chapter, a lessor or tenant may not vary the provisions of this chapter by agreement or waive rights conferred by this chapter. (V.A.C.S. Art. 5238b, Sec. 12.)

"Section 59.005. DAMAGES FOR VIOLATION. A person injured by a violation of this chapter may sue for damages under the Deceptive Trade Practices--Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code). (V.A.C.S. Art. 5238b, Sec. 14.)

"Section 59.006. ATTACHMENT AND PRIORITY OF LIEN. A lien under this chapter attaches on the date the tenant places the property at the self-service storage facility. The lien takes priority over all other liens on the same property. (V.A.C.S. Art. 5238b, Sec. 10.)

"Section 59.007. PURCHASE OF PROPERTY. A good faith purchaser of property sold to satisfy a lien under this chapter takes the property free of a claim by a person against whom the lien was valid, regardless of whether the lessor has complied with this chapter. (V.A.C.S. Art. 5238b, Sec. 13.)

"Section 59.008. REDEMPTION. A tenant may redeem property seized under a judicial order or a contractual landlord's lien

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prior to its sale or other disposition by paying the lessor the amount of the lien and the lessor's reasonable expenses incurred under this chapter. (V.A.C.S. Art. 5238b, Sec. 9.)

"Section 59.009. RESIDENTIAL USE. A tenant may not use or allow the use of a self-service storage facility as a residence. (V.A.C.S. Art. 5238b, Sec. 11.)

"[Sections 59.010-59.020 reserved for expansion]

"SUBCHAPTER B. STATUTORY LIEN

"Section 59.021. STATUTORY LIEN. A lessor has a lien on the property in a self-service storage facility for the payment of charges that are due and unpaid by the tenant. (V.A.C.S. Art. 5238b, Sec. 4.)

"Section 59.022. ENFORCEMENT OF STATUTORY LIEN. A lessor may enforce a lien under this subchapter only under a judgment by a court of competent jurisdiction that forecloses the lien and orders the sale of the property to which it is attached. (V.A.C.S. Art. 5238b, Sec. 5(a).)

"[Sections 59.023-59.040 reserved for expansion]

"SUBCHAPTER C. CONTRACTUAL LANDLORD'S LIEN

"Section 59.041. ENFORCEMENT OF CONTRACTUAL LANDLORD'S LIEN. A lessor may enforce a contractual landlord's lien by seizing and selling the property to which the lien is attached if the terms of the lien are underlined or printed in conspicuous bold print in a written rental agreement between the lessor and tenant. (V.A.C.S. Art. 5238b, Sec. 5(b).)

"Section 59.042. PROCEDURE FOR SEIZURE AND SALE. (a) A lessor who wishes to enforce a contractual landlord's lien by seizing and selling or otherwise disposing of the property to which it is attached must deliver written notice of the claim to the tenant.

"(b) If the tenant fails to satisfy the claim until the 15th day after the day that the notice is delivered, the lessor must publish or post notices advertising the sale as provided by this subchapter.

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"(c) If notice is by publication, the lessor may sell the property until the 15th day after the day that the first notice is published. If notice is by posting, the lessor may sell the property after the 10th day after the day that the notices are posted. (V.A.C.S. Art. 5238b, Secs. 6(a), 7 (part), 8(a) (part), 8(b), 8(d) (part).)

"Section 59.043. CONTENTS AND DELIVERY OF NOTICE OF CLAIM.

(a) The lessor's notice to the tenant of the claim must contain:

"(1) an itemized account of the claim;

"(2) the name, address, and telephone number of the lessor or the lessor's agent;

"(3) a statement that the contents of the self-service storage facility have been seized under the contractual landlord's lien; and

"(4) a statement that if the claim is not satisfied before the 15th day after the day that the notice is delivered, the property may be sold at public auction.

"(b) The lessor must deliver the notice in person or by certified mail to the tenant's last known address as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement. Notice by mail is considered delivered when the notice, properly addressed with postage prepaid, is deposited with the United States Postal Service. (V.A.C.S. Art. 5238b, Secs. 3 (part), 7 (part).)

"Section 59.044. NOTICE OF SALE. (a) The notice advertising the sale must contain:

"(1) a general description of the property;

"(2) a statement that the property is being sold to satisfy a landlord's lien;

"(3) the tenant's name;

"(4) the address of the self-service storage facility; and

"(5) the time, place, and terms of the sale.

"(b) The lessor must publish the notice once in each of two consecutive weeks in a newspaper of general circulation in the

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county in which the self-service storage facility is located. If there is not a newspaper of general circulation in the county, the lessor may instead post a copy of the notice at the self-service storage facility and at least five other conspicuous locations near the facility. (V.A.C.S. Art. 5238b, Secs. 8(a) (part), 8(c), 8(d) (part).)

"Section 59.045. CONDUCT OF SALE. A sale under this subchapter must be a public sale at the self-service storage facility or a reasonably near public place. The lessor must conduct the sale according to the terms specified in the notice advertising the sale and sell the property to the highest bidder. (V.A.C.S. Art. 5238b, Secs. 6(b), 6(c).)

"Section 59.046. EXCESS PROCEEDS OF SALE. If the proceeds of a sale under this subchapter are greater than the amount of the lien and the reasonable expenses of the sale, the lessor shall deliver written notice of the excess to the tenant's last known address as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement. The lessor shall retain the excess and deliver it to the tenant if the tenant requests it before two years after the date of the sale. If the tenant does not request the excess before two years after the date of the sale, the lessor owns the excess. (V.A.C.S. Art. 5238b, Secs. 3 (part), 6(d).)

"CHAPTER 60. NEWSPAPER EMPLOYEE'S LIEN

"Section 60.001. LIEN

"Section 60.002. PROPERTY SUBJECT TO LIEN

"CHAPTER 60. NEWSPAPER EMPLOYEE'S LIEN

"Section 60.001. LIEN. A worker in the editorial, reportorial, advertising, or business department of a newspaper, periodical, or other publication who labors or performs a service for the publication under a written or an oral contract with any person has a first lien under this chapter for the amount due under the contract. (V.A.C.S. Art. 5484 (part).)

"Section 60.002. PROPERTY SUBJECT TO LIEN. The lien attaches to all products, papers, machinery, tools, fixtures,

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appurtenances, goods, wares, merchandise, subscription contracts, chattels, or other things of value that are created wholly or partly by the labor of the workers or that are necessarily connected with the performance of their labor or service and that are owned by or in possession of the person with whom the workers contracted. (V.A.C.S. Art. 5484 (part).)

"[Chapters 61-69 reserved for expansion]

"CHAPTER 70. MISCELLANEOUS LIENS

"SUBCHAPTER A. POSSESSORY LIENS

"Section 70.001. WORKER'S LIEN

"Section 70.002. LIENS ON GARMENTS

"Section 70.003. STABLE KEEPER'S, GARAGEMAN'S, AND PASTURER'S LIENS

"Section 70.004. POSSESSION OF MOTOR VEHICLE

"Section 70.005. SALE OF PROPERTY OTHER THAN MOTOR VEHICLE

"Section 70.006. SALE OF MOTOR VEHICLE

"Section 70.007. UNCLAIMED EXCESS

"Section 70.008. ATTORNEY'S FEES

"[Sections 70.009-70.100 reserved for expansion]

"SUBCHAPTER B. LIENS ON VESSELS

"Section 70.101. GENERAL LIEN ON VESSELS

"Section 70.102. LIEN OF NAVIGATION DISTRICT OR PORT

"Section 70.103. PROPERTY SUBJECT TO LIEN

"Section 70.104. PERSONS WHO MAY BIND VESSEL

"[Sections 70.105-70.200 reserved for expansion]

"SUBCHAPTER C. STOCK BREEDER'S LIEN

"Section 70.201. STOCK BREEDER'S LIEN

"Section 70.202. ENFORCEMENT OF LIEN

"CHAPTER 70. MISCELLANEOUS LIENS

"SUBCHAPTER A. POSSESSORY LIENS

"Section 70.001. WORKER'S LIEN. (a) A worker in this state who by labor repairs an article, including a vehicle, may retain possession of the article until:

"(1) the amount due under the contract for the repairs is paid; or

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"(2) if no amount is specified by contract, the reasonable and usual compensation is paid.

"(b) If a worker relinquishes possession of a motor vehicle in return for a written order for payment on which payment is stopped, the lien provided by this section continues to exist and the worker is entitled to possession of the vehicle until the amount due is paid, unless the vehicle is possessed by a person who became a bona fide purchaser of the vehicle after the stop payment order was made. (V.A.C.S. Art. 5503, Secs. (a), (b).)

"Section 70.002 LIENS ON GARMENTS. A person with whom a garment is left for repair, alteration, dyeing, cleaning, laundering, or pressing may retain possession of the garment until:

"(1) the amount due the person under the contract for the work is paid, or

"(2) if no amount is specified by contract, the reasonable and usual compensation is paid. (V.A.C.S. Art. 5506b, Sec. 1.)

"Section 70.003. STABLE KEEPER'S, GARAGEMAN'S, AND PASTURER'S LIENS. (a) A stable keeper or garageman with whom an animal or vehicle is left for care has a lien on the animal or vehicle for the amount of the charges for the care.

"(b) An owner or lessee of a pasture with whom an animal is left for grazing has a lien on the animal for the amount of charges for the grazing. (V.A.C.S. Art. 5502.)

"Section 70.004. POSSESSION OF MOTOR VEHICLE. (a) A holder of a lien under Section 70.003 on a motor vehicle who obtains possession of the vehicle under a state law or city ordinance shall give notice to the last known registered owner and each lienholder of record not later than the 10th day after the day possession is obtained.

"(b) The notice must be sent by certified mail with return receipt requested and must contain:

"(1) a request to remove the vehicle;

"(2) a request for payment;

"(3) the location of the vehicle; and

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"(4, the amount of accrued charges.

"(c) A person is entitled to fees for towing, preservation, and notification and to reasonable storage fees for up to 10 days before the day that the notice is mailed. After the day that the notice is mailed, the person is entitled to reasonable storage fees until the vehicle is removed and accrued charges are paid. (V.A.C.S. Art. 5504a, Sec. (c).)

"Section 70.005. SALE OF PROPERTY OTHER THAN MOTOR VEHICLE.

(a) A person holding a lien under this subchapter on property other than a motor vehicle subject to the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), who retains possession of the property for 60 days after the day that the charges accrue shall request the owner to pay the unpaid charges due if the owner's residence is in this state and known. If the charges are not paid before the 11th day after the day of the request, the lienholder may, after 20 days' notice, sell the property at a public sale, or if the lien is on a garment, at a public or private sale.

"(b) If the residence of the owner of property subject to sale under this section is not in this state or not known, the lienholder may sell the property without notice at a public sale after the 60th day after the day that the unpaid charges accrued.

"(c) The lienholder shall apply the proceeds of a sale under this section to the charges. If the lien is on a garment, the lienholder shall apply the proceeds to the charges and the reasonable costs of holding the sale. The lienholder shall pay excess proceeds to the person entitled to them. (V.A.C.S. Art. 5504; Art. 5506b, Sec. 2.)

"Section 70.006. SALE OF MOTOR VEHICLE. (a) A holder of a lien under this subchapter on a motor vehicle subject to the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), who retains possession of the vehicle for 30 days after the day that the charges accrue shall give written notice to the owner and each holder of a lien recorded on the

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vehicle's certificate of title. The notice must be sent by certified mail with return receipt requested and must include the amount of the charges and a request for payment.

"(b) If the charges are not paid before the 31st day after the day that the notice is mailed, the lienholder may sell the vehicle at a public sale and apply the proceeds to the charges. The lienholder shall pay excess proceeds to the person entitled to them. (V.A.C.S. Art. 5504a, Secs. (a), (b).)

"Section 70.007. UNCLAIMED EXCESS. (a) If a person entitled to excess proceeds under this subchapter is not known or has moved from this state or the county in which the lien accrued, the person holding the excess shall pay it to the county treasurer of the county in which the lien accrued. The treasurer shall issue the person a receipt for the payment.

"(b) If the person entitled to the excess does not claim it before two years after the day it is paid to the treasurer, the excess becomes a part of the county's general fund. (V.A.C.S. Art. 5505; Art. 5506b, Sec. 3.)

"Section 70.008. ATTORNEY'S FEES. The court in a suit concerning possession of a motor vehicle and a debt due on it may award reasonable attorney's fees to the prevailing party. (V.A.C.S. Art. 5503, Sec. (c).)

"[Sections 70.009-70.100 reserved for expansion]

"SUBCHAPTER B. LIENS ON VESSELS

"Section 70.101. GENERAL LIEN ON VESSELS. A person who furnishes supplies or materials or who performs repairs or labor for or on account of a domestic vessel that is owned in whole or part in this state has a lien for the person's charges. (V.A.C.S. Art. 5500, Sec. 1 (part).)

"Section 70.102. LIEN OF NAVIGATION DISTRICT OR PORT. (a) A navigation district or port within the territorial limits of this state that furnishes supplies or materials, performs repairs or labor, or provides a facility or service for which charges are specified in its official published port tariff for or on account

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of a domestic vessel that is owned in whole or part in this state has a maritime lien for the amount of its charges.

"(b) A lien under this section may be enforced in rem. A plaintiff in an action to enforce the lien need not allege or prove that credit was given to the vessel. (V.A.C.S. Art. 5500, Sec. 2 (part).)

"Section 70.103. PROPERTY SUBJECT TO LIEN. A lien under this subchapter attaches to the vessel and its tackle, apparel, furniture, and freight money. (V.A.C.S. Art. 5500, Secs. 1 (part), 2 (part).)

"Section 70.104. PERSONS WHO MAY BIND VESSEL. (a) The following persons are presumed to be authorized by the owner of a vessel to incur charges that give rise to a lien under this subchapter:

"(1) the managing owner;

"(2) the ship's husband;

"(3) the master;

"(4) the local agent; and

"(5) a person entrusted with management of the vessel at the port of supply.

"(b) A person tortiously or unlawfully in possession or charge of a vessel may not bind the vessel. (V.A.C.S. Art. 5500, Sec. 3.)

"[Sections 70.105-70.200 reserved for expansion]

"SUBCHAPTER C. STOCK BREEDER'S LIEN

"Section 70.201. STOCK BREEDER'S LIEN. An owner or keeper of a stallion, jack, bull, or boar confined to be bred for profit has a preference lien on the offspring of the animal for the amount of the charges for the breeding services, unless the owner or keeper misrepresents the animal by false pedigree. (V.A.C.S. Art. 5501 (part).)

"Section 70.202. ENFORCEMENT OF LIEN. The lien may be enforced in the same manner as a statutory landlord's lien. The lien remains in force for 10 months from the day that the offspring

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is born, but the lien may not be enforced until five months after the date of birth of the offspring. (V.A.C.S. Art. 5501 (part).)

"TITLE 6. ESCHEAT

"CHAPTER 71. ESCHEAT OF DECEDENT'S ESTATE

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 71.001. ESCHEAT

"Section 71.002. PRESUMPTION OF DEATH

"Section 71.003. PRESUMPTION OF INTESTACY

"Section 71.004. PRESUMPTION OF DEATH WITHOUT HEIRS

"Section 71.005. ACT OF OWNERSHIP

"Section 71.006. REVIEW OF PROBATE DECREE

"Section 71.007. REPORTING AND DELIVERY

"[Sections 71.008-71.100 reserved for expansion]

"SUBCHAPTER B. ESCHEAT PROCEEDINGS

"Section 71.101. PETITION FOR ESCHEAT

"Section 71.102. CITATION

"Section 71.103. PARTY TO PROCEEDING

"Section 71.104. APPEARANCE OF CLAIMANTS

"Section 71.105. TRIAL

"Section 71.106. DEFAULT JUDGMENT

"Section 71.107. JUDGMENT FOR STATE

"Section 71.108. COSTS PAID BY STATE

"Section 71.109. APPEAL; WRIT OF ERROR

"[Sections 71.110-71.200 reserved for expansion]

"SUBCHAPTER C. DISPOSITION OF ESCHEATED PROPERTY

"Section 71.201. SEIZURE AND SALE OF PERSONAL PROPERTY

"Section 71.202. REAL PROPERTY IN PERMANENT SCHOOL FUND

"Section 71.203. ACCOUNT OF ESCHEATED PROPERTY

"[Sections 71.204-71.300 reserved for expansion]

"SUBCHAPTER D. RECOVERY OF ESCHEATED PROPERTY

"Section 71.301. SUIT FOR ESCHEATED PERSONAL PROPERTY

"Section 71.302. RECOVERY OF PERSONAL PROPERTY

"Section 71.303. SUIT FOR ESCHEATED REAL PROPERTY

"Section 71.304. STATE AS PARTY IN SUIT FOR ASSETS

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"TITLE 6. ESCHEAT

"CHAPTER 71. ESCHEAT OF DECEDENT'S ESTATE

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 71.001. ESCHEAT. If an individual dies intestate and without heirs, the real and personal property of that individual escheats to and vests in the state. (V.A.C.S. Art. 3272, Sec. 1 (part).)

"Section 71.002. PRESUMPTION OF DEATH. An individual is presumed dead for the purpose of determining if the individual's real or personal property, other than traveler's checks, escheats if the individual:

"(1) is absent from the individual's place of residence for seven years or longer; and

"(2) is not known to exist. (V.A.C.S. Art. 3272, Secs. 1 (part), 2.)

"Section 71.003. PRESUMPTION OF INTESTACY. An individual is presumed to have died intestate if, on or before the seventh anniversary of the date of the individual's death, the individual's will has not been recorded or probated in the county where the individual's property is located. (V.A.C.S. Art. 3272, Sec. 1 (part).)

"Section 71.004. PRESUMPTION OF DEATH WITHOUT HEIRS. An individual is presumed to have died leaving no heirs if for the seven-year period preceding the court's determination:

"(1) a lawful claim to the individual's property has not been asserted; and

"(2) a lawful act of ownership of the individual's property has not been exercised. (V.A.C.S. Art. 3272, Sec. 1 (part).)

"Section 71.005. ACT OF OWNERSHIP. For the purposes of this chapter, an individual exercises a lawful act of ownership in property by, personally or through an agent, paying taxes to this state on the property. (V.A.C.S. Art. 3272, Sec. 1 (part).)

"Section 71.006. REVIEW OF PROBATE DECREE. (a) If the state claims that an estate that has been administered in probate

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court in this state is subject to escheat, the state may have the judgment of the probate court reviewed by filing a petition in district court alleging that the administration of the estate was obtained by fraud or mistake of fact.

"(b) The case shall be tried in accordance with the law for the revision and correction of a decree of the probate court. (V.A.C.S. Art. 3288.)

"Section 71.007. REPORTING AND DELIVERY. (a) Each person, other than a banking organization or life insurance company, holding personal property that escheats under this chapter is subject to the reporting and delivery requirements of Chapter 72.

"(b) Each depository to which Chapter 73 applies and that holds personal property that escheats under this chapter is subject to the reporting and delivery requirements of Chapter 73.

"(c) Each life insurance company holding personal property that escheats under this chapter is subject to the reporting and delivery requirements of Article 4.08, Insurance Code. (New.)

"[Sections 71.008-71.100 reserved for expansion]

"SUBCHAPTER B. ESCHEAT PROCEEDINGS

"Section 71.101. PETITION FOR ESCHEAT. (a) If the attorney general or a district attorney, criminal district attorney, or county attorney is informed or has reason to believe that real or personal property is subject to escheat under this chapter, the attorney shall file a sworn petition requesting the escheat of the property and requesting a writ of possession for the property.

"(b) The petition must contain:

"(1) a description of the property;

"(2) the name of the deceased owner of the property;

"(3) the name of the tenants or persons claiming the estate, if known; and

"(4) the facts supporting the escheat of the estate.

"(c) If the petition is filed by a person other than the attorney general, the person shall send to the attorney general written notice of the filing and a copy of the petition to permit

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the attorney general to elect to participate on behalf of the state.

"(d) An action brought under this section is governed by the procedure relating to class actions provided by the Texas Rules of Civil Procedure.

"(e) A petition filed under this section is not subject to an objection relating to misjoinder of parties or causes of action. (V.A.C.S. Art. 3273 (part).)

"Section 71.102. CITATION. (a) If a petition is filed under this subchapter, the district clerk shall issue citation as in other civil suits to:

"(1) each defendant alleged by the petition to possess or claim the property that is the subject of the petition;

"(2) any person required by this chapter to be cited; and

"(3) persons interested in the estate.

"(b) The citation required by Subdivision (3) of Subsection (a) must be published as required for other civil suits and must:

"(1) briefly state the contents of the petition; and

"(2) request all persons interested in the estate to appear and answer at the next term of the court. (V.A.C.S. Arts. 3274, 3275.)

"Section 71.103. PARTY TO PROCEEDING. (a) A person who exercises a lawful act of ownership in property that is the subject of an escheat proceeding must be made a party to the proceeding by:

"(1) personal service of citation if the person is a resident of this state and the person's address can be obtained by reasonable diligence, or

"(2) service of citation on a person's agent if the person is a nonresident or a resident who cannot be found and the agent can be found by the use of reasonable diligence.

"(b) For the purposes of this section, reasonable diligence includes an inquiry and investigation of the records of the office of the tax assessor-collector of the county in which the property sought to be escheated is located (V.A.C.S. Art. 3272, Sec. 1 (part).)

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"Section 71.104. APPEARANCE OF CLAIMANTS. Any person, whether named in the escheat petition or not, who claims an interest in property that is the subject of an escheat proceeding may appear, enter a pleading, and oppose the facts stated in the petition. (V.A.C.S. Art. 3276.)

"Section 71.105. TRIAL. (a) If a person appears and denies the state's right to the property or opposes a material fact of the petition, the court shall try the issue as any other issue of fact.

"(b) The court may order a survey as in other cases in which the title or the boundary of the land is in question. (V.A.C.S. Art. 3278.)

"Section 71.106. DEFAULT JUDGMENT. If citation is issued in accordance with Section 71.102 and no person answers within the period provided by the Texas Rules of Civil Procedure, the court shall render a default judgment in favor of the state. (V.A.C.S. Art. 3277.)

"Section 71.107. JUDGMENT FOR STATE. (a) If the property escheats to the state, the court shall render judgment for the state to recover the property and may award court costs to the state.

"(b) If the judgment is for real property, the court shall fix the minimum price for which the state may sell the property, and, after the second anniversary of the date of the final judgment, the court shall issue a writ of possession for the property.

"(c) If the judgment is for personal property, the court shall issue a writ of possession that contains an adequate description of the property as in other cases for recovery of personal property. (V.A.C.S. Art. 3279.)

"Section 71.108. COSTS PAID BY STATE. If the property does not escheat, the state shall pay court costs. The clerk of the court shall certify the amount of the costs, and when the certificate is filed in the office of the comptroller of public accounts, the comptroller shall issue a warrant for the amount of the costs. (V.A.C.S. Art. 3280.)

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"Section 71.109. APPEAL; WRIT OF ERROR. A party who appeared at an escheat proceeding may appeal the judgment rendered or may file an application for a writ of error on the judgment. The attorney general or the other person acting on behalf of the state in the escheat proceeding may make an appeal or file the writ. (V.A.C.S. Art. 3284.)

"[Sections 71.110-71.200 reserved for expansion]

"SUBCHAPTER C. DISPOSITION OF ESCHEATED PROPERTY"

"Section 71.201. SEIZURE AND SALE OF PERSONAL PROPERTY. (a) If personal property escheated to the state, the court shall issue to the sheriff a writ that commands the sheriff to seize the escheated property.

"(b) The sheriff shall:

"(1) dispose of the personal property at public auction in accordance with the law regarding the sale of personal property under execution; and

"(2) deposit into the State Treasury the proceeds of the sale, less court costs. (V.A.C.S. Art. 3282.)

"Section 71.202. REAL PROPERTY IN PERMANENT SCHOOL FUND.

(a) Real property that escheats to the state under this title becomes a part of the permanent school fund.

"(b) Before the 91st day after the day on which a judgment that provides for the recovery of real property is rendered, the clerk of the district court rendering the judgment shall send to the Commissioner of the General Land Office:

"(1) a certified copy of the judgment; and

"(2) notice of any appeal of that judgment.

"(c) The commissioner shall list real property as escheated permanent school land when the commissioner receives:

"(1) a certified copy of a judgment under which the property escheats to the state and from which appeal is not taken; or

"(2) a certified copy of notice of the affirmance on appeal of a judgment under which the property escheats to the state. (V.A.C.S. Art. 3281 (part).)

Additions in text indicated by underline; deletions by ~~strikeouts~~

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"Section 71.203. ACCOUNT OF ESCHEATED PROPERTY. The comptroller shall keep an account of the money paid to and real property vested in this state under this chapter. (V.A.C.S. Art. 3285.)

"[Sections 71.204-71.300 reserved for expansion]

"SUBCHAPTER D. RECOVERY OF ESCHEATED PROPERTY

"Section 71.301. SUIT FOR ESCHEATED PERSONAL PROPERTY. (a)

If personal property of a deceased owner escheats to the state under this chapter and is delivered to the state, a person who claims the property as an heir, devisee, or legatee of the deceased may file suit against the state in a district court of Travis County, Texas. The suit must be filed on or before the fourth anniversary of the date of the final judgment of the escheat proceeding.

"(b) The petition must state the nature of the claim and request that the money be paid to the claimant.

"(c) A copy of the petition shall be served on the attorney general not later than the 20th day preceding the return day of the process. (V.A.C.S. Art. 3286.)

"Section 71.302. RECOVERY OF PERSONAL PROPERTY. (a) If in a suit filed under Section 71.301 the court finds that a claimant is entitled to recover personal property, the court shall order the comptroller to issue a warrant for payment of the claim without interest or costs.

"(b) A copy of the order under seal of the court is sufficient voucher for issuing the warrant. (V.A.C.S. Art. 3287.)

"Section 71.303. SUIT FOR ESCHEATED REAL PROPERTY. (a) If real property escheats to the state under this chapter, a person who was not personally served with citation in the escheat proceedings may file suit for all or a part of the property. The suit must be filed not later than the second anniversary of the date of the final judgment in the escheat proceedings.

"(b) To the extent the claimant is adjudged to be the owner of all or a part of the property, the state is divested of the property. (V.A.C.S. Art. 3283.)

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"Section 71.304. STATE AS PARTY IN SUIT FOR ASSETS. A suit brought for the collection of assets delivered to the State Treasurer under this chapter must be brought in the name of this state. (V.A.C.S. Art. 3289.)

"CHAPTER 72. ESCHEAT OF PERSONAL PROPERTY HELD BY PERSON OTHER THAN BANKING ORGANIZATION OR LIFE INSURANCE COMPANY

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 72.001. RECIPROCITY; APPLICATION OF CHAPTER

"[Sections 72.002-72.100 reserved for expansion]

"SUBCHAPTER B. PROPERTY REPORT

"Section 72.101. PERSONAL PROPERTY SUBJECT TO ESCHEAT

"Section 72.102. TRAVELER'S CHECK

"Section 72.103. RESTORATION OF CHARGES

"Section 72.104. PROPERTY REPORT

"Section 72.105. VERIFICATION OF REPORT

"[Sections 72.106-72.200 reserved for expansion]

"SUBCHAPTER C. NOTICE OF ABANDONED PROPERTY

"Section 72.201. NOTICE TO SHERIFF

"Section 72.202. PUBLISHED NOTICE

"Section 72.203. NOTICE FOR ITEM WITH VALUE NOT EXCEEDING \$50

"Section 72.204. NOTICE TO OWNER

"[Sections 72.205-72.300 reserved for expansion]

"SUBCHAPTER D. ESCHEAT AND DELIVERY

"Section 72.301. ESCHEAT OF PROPERTY

"Section 72.302. DELIVERY OF PROPERTY TO STATE TREASURER

"Section 72.303. EFFECT OF LATE NOTICE

"Section 72.304. LIABILITY AFTER DELIVERY

"Section 72.305. SUIT TO COMPEL DELIVERY

"Section 72.306. UNCLAIMED PROPERTY HELD BY FEDERAL GOVERNMENT

"[Sections 72.307-72.400 reserved for expansion]

"SUBCHAPTER E. DISPOSITION OF ESCHEATED PROPERTY

"Section 72.401. SALE OF PROPERTY

"Section 72.402. NOTICE OF SALE

"Section 72.403. PURCHASER'S TITLE

"[Sections 72.404-72.500 reserved for expansion]

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"SUBCHAPTER F. CLAIM FOR ESCHEATED PROPERTY

"Section 72.501. FILING OF CLAIM

"Section 72.502. CONSIDERATION OF CLAIM

"Section 72.503. HEARING

"Section 72.504. PAYMENT OF CLAIM

"Section 72.505. APPEAL

"Section 72.506. FEE FOR RECOVERY

"[Sections 72.507-72.600 reserved for expansion]

"SUBCHAPTER G. ESCHEAT EXPENSE AND REIMBURSEMENT FUND

"Section 72.601. FUND

"Section 72.602. TRANSFERS FROM EXECUTIVE DEPARTMENT

"Section 72.603. USE OF FUND

"Section 72.604. AUDIT; APPROPRIATION

"[Sections 72.605-72.700 reserved for expansion]

"SUBCHAPTER H. ENFORCEMENT

"Section 72.701. RULES

"Section 72.702. EXAMINATION OF RECORDS

"Section 72.703. ADDITIONAL PERSONNEL

"Section 72.704. ASSISTANCE IN ENFORCEMENT

"Section 72.705. PENALTIES

**"CHAPTER 72. ESCHEAT OF PERSONAL PROPERTY HELD BY PERSON OTHER
THAN BANKING ORGANIZATION OR LIFE INSURANCE COMPANY**

"SUBCHAPTER A GENERAL PROVISIONS

"Section 72.001. RECIPROCITY; APPLICATION OF CHAPTER. (a)
Specific property is not presumed abandoned and is not subject to
this chapter if:

**"(1) the property is held for or owed or distributable to an
owner whose last known address is in another state;**

**"(2) the holder of the property is subject to the
jurisdiction of the other state;**

**"(3) the property has been claimed as abandoned or has
escheated under the laws of the other state; and**

**"(4) the other state has a reciprocal legal provision that
property is not presumed abandoned or escheatable by the other**

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state if the property is held for or owed or distributable to an owner whose last known address is in this state and the holder of the property is subject to the jurisdiction of this state.

"(b) This chapter applies to tangible and intangible personal property held in this state and to tangible and intangible personal property held outside this state for a person whose last known address is in this state.

"(c) This chapter does not apply to property held by a bank, savings and loan association, or other banking organization.

"(d) This chapter supplements Chapter 71, and either procedure may be followed to the extent applicable. (V.A.C.S. Art. 3272a, Secs. 1 (part), 10, 10a, 14; Art. 3273 (part).)

"[Sections 72.002-72.100 reserved for expansion]

"SUBCHAPTER B. PROPERTY REPORT

"Section 72.101. PERSONAL PROPERTY SUBJECT TO ESCHEAT. Personal property, other than traveler's checks, is presumed abandoned and subject to escheat if, for longer than seven years:

"(1) the existence and location of the owner of the property is unknown to the holder of the property;

"(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised; and

"(3) a will of the owner of the property has not been recorded or probated in the county in which the property is located. (V.A.C.S. Art. 3272a, Sec. 1 (part).)

"Section 72.102. TRAVELER'S CHECK. (a) A traveler's check is not presumed to be abandoned or subject to escheat to this state under this chapter unless:

"(1) the records of the issuer of the check indicate that the check was purchased in this state;

"(2) the issuer's principal place of business is in this state and the issuer's records do not indicate the state in which the check was purchased; or

"(3) the issuer's principal place of business is in this state, the issuer's records indicate that the check was purchased

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in another state, and the laws of that state do not provide for the escheat or custodial taking of the check.

"(b) A traveler's check to which Subsection (a) applies is presumed to be abandoned and subject to escheat on the latest of:

"(1) the 15th anniversary of the date on which the check was issued;

"(2) the 15th anniversary of the date on which the issuer of the check last received from the owner of the check written communication concerning the check; or

"(3) the 15th anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in the check. (V.A.C.S. Art. 3272a, Sec. 1 (part).)

"Section 72.103. RESTORATION OF CHARGES. If the personal property subject to escheat is a dormant deposit or a dormant account on which a deduction for service, maintenance, or other charges would be restored under the policy or procedure of the holder of the property on request of the owner, the amount subject to escheat includes the amount of the deduction that would be restored. (V.A.C.S. Art. 3272a, Sec. 2 (part).)

"Section 72.104. PROPERTY REPORT. (a) Before the 61st day after the day on which personal property becomes subject to escheat under this chapter or under Chapter 71, each person holding the property shall file with the State Treasurer three copies of a property report compiled in accordance with this section. After an initial filing, a person may file with the State Treasurer three copies of an updated report before May 2 of each year.

"(b) The property report must include:

"(1) the name, if known, and the last known address, if any, of each person who, from the records of the holder of the property, appears to be the owner of the property, or the name and address, if known, of any person who is entitled to the property;

"(2) a brief description of the property including the balance of a deposit;

"(3) the date that the property became payable, demandable, or returnable;

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"(4) the date of the last transaction with the owner concerning the property;

"(5) any deduction made by the holder of the property for a service, maintenance, or other charge, unless fully restored under Section 72.103 and included in the amount reported; and

"(6) other information that the State Treasurer by rule requires to be disclosed as necessary for the administration of this chapter.

"(c) If a person holds proceeds from mineral interests for more than one owner, the holder shall assign an identifying number to each owner's account of proceeds. For mineral proceeds, a property report must include:

"(1) the nature of the proceeds and the identifying number of the account, if any, or a description of the proceeds;

"(2) credits grouped by the county from which the credited proceeds were derived, including credits that were previously disposed of in any manner other than by payment to the owner;

"(3) the name and last known address of the owner of the proceeds;

"(4) the fractional mineral interest of the owner;

"(5) the description and location of the land from which the minerals were produced;

"(6) the name of the person who operated the well or mine;

"(7) the period during which the proceeds accumulated;

"(8) the price for which the minerals were sold; and

"(9) the amount that, according to records, is due from each interest, except as provided by Subsection (d).

"(d) Amounts due from mineral interests that individually are less than \$10 may be reported in the aggregate. (V.A.C.S. Art. 3272a, Secs. 1 (part), 2 (part).)

"Section 72.105. VERIFICATION OF REPORT. (a) The person preparing a property report shall place at the end of each copy of the report verification made under oath and executed by:

"(1) the individual holding the reported property;

"(2) a partner if the holder is a partnership;

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"(3) an officer if the holder is an unincorporated association or a private corporation; or

"(4) the chief fiscal officer if the holder is a public corporation.

"(b) The verification must include the following sentence:

"'The foregoing report contains a full and complete list of all personal property held by the undersigned that, from the knowledge and records of the undersigned, is subject to escheat to the State of Texas.' (V.A.C.S. Art. 3272a, Sec. 2 (part).)

"[Sections 72.106-72.200 reserved for expansion]

"SUBCHAPTER C. NOTICE OF ABANDONED PROPERTY

"Section 72.201. NOTICE TO SHERIFF. (a) Before the 61st day after the day on which a property report is received, the State Treasurer shall mail a notice of its receipt to the sheriff of the county of the domicile or principal place of business of the person who filed the report. The notice must be entitled 'Notice of Names of Persons Appearing to be Owners of Abandoned Property' and must contain:

"(1) the names, listed alphabetically, and the last known addresses, if any, of the persons listed in the report; and

"(2) a statement that, by addressing an inquiry to the person who filed the report, any person who possesses or claims an interest in the property may obtain information concerning the amount and description of the property and the name and address of the holder.

"(b) Before the 11th day after the day on which the notice is received, the sheriff shall post the notice on the door or bulletin board of the courthouse. The notice must remain posted for at least 30 days.

"(c) When the notice is removed, the sheriff shall return it to the State Treasurer with the sheriff's certification indicating the date and the time of the posting. (V.A.C.S. Art. 3272a, Sec. 3(a).)

"Section 72.202 PUBLISHED NOTICE. (a) Except as provided by Section 72.203, the State Treasurer, before the 121st day after
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the day on which a property report is filed, shall have a notice published in an English language newspaper of general circulation:

"(1) in the county in which is located the last known address of a person required to be named in the notice; or

"(2) if the address of a person listed is not set out in the report or if it is outside of the state, in the county in which the holder of the abandoned property has its principal place of business, registered office, or agent for service in this state.

"(b) The published notice must be entitled 'Notice of Names of Persons Appearing to be Owners of Abandoned Property' and must contain:

"(1) the names, listed alphabetically, and last known addresses, if any, of the persons listed in the property report;

"(2) a statement that, by addressing an inquiry to the State Treasurer, any person possessing an interest in the reported property may obtain information concerning the amount and description of the property and the name and address of the holder; and

"(3) a statement that if the owner does not present proof of the claim to the holder and establish the owner's right to receive the property within the period provided by Section 72.302, the property will be delivered to the State Treasurer and that all claims made after that delivery must be sent to the State Treasurer. (V.A.C.S. Art. 3272a, Secs. 3(b), (c) (part).)

"Section 72.203. NOTICE FOR ITEM WITH VALUE NOT EXCEEDING \$50. In the notice required by Section 72.202, the State Treasurer is not required to publish information regarding an item having a value that does not exceed \$50 unless the State Treasurer determines that publication of that information is in the public interest. (V.A.C.S. Art. 3272a, Sec. 3(d).)

"Section 72.204. NOTICE TO OWNER. (a) Before the 121st day after the day on which a property report is received, the State Treasurer shall mail a notice to each person whose address appears in the report and who appears to be entitled to the reported property that is valued at more than \$50.

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"(b) The notice must contain:

"(1) a statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears to be entitled;

"(2) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and

"(3) a statement that if the owner does not present proof of the claim to the holder and establish the owner's right to receive the property within the period provided by Section 72.302, the property will be delivered to the State Treasurer and that all claims made after that delivery must be sent to the State Treasurer. (V.A.C.S. Art. 3272a, Secs. 3(e), (f).)

"[Sections 72.205-72.300 reserved for expansion]

"SUBCHAPTER D. ESCHEAT AND DELIVERY

"Section 72.301. ESCHEAT OF PROPERTY. Reported personal property is considered to be abandoned and escheats to the state if the property remains unclaimed:

"(1) on the 91st day after the day on which notice is published; or

"(2) if publication is not required, on the 121st day after the day on which the report is filed. (V.A.C.S. Art. 3272a, Sec. 4(a).)

"Section 72.302. DELIVERY OF PROPERTY TO STATE TREASURER.

(a) If the owner of property for which notice is published does not establish the owner's right to the property before the 61st day after the day on which notice is published, the holder of the property shall deliver the property to the State Treasurer after the 90th day after the day on which the notice is published.

"(b) If publication of notice is not required, the person who filed the property report shall deliver the property identified by the report to the State Treasurer within a reasonable time after the 120th day after the day on which the report was filed.

"(c) Instead of delivering to the State Treasurer reported property for which publication of notice is required, the holder

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shall file with the State Treasurer a verified written explanation of the proof of claim or the error in the presumption of abandonment if:

"(1) the owner establishes the owner's right to the property to the satisfaction of the holder of the property within the time specified by this section; or

"(2) it appears that for some other reason the presumption of abandonment is erroneous. (V.A.C.S. Art. 3272a, Secs. 3(c) (part), 4(b).)

"Section 72.303. EFFECT OF LATE NOTICE. Failure of the State Treasurer to give notice within the period prescribed by Section 72.202 does not affect:

"(1) the owner's right to claim the property from the holder before the 61st day after the day on which the notice is actually published; or

"(2) the holder's duty to deliver the property to the State Treasurer after the 90th day after the day on which the notice is actually published. (V.A.C.S. Art. 3272a, Sec. 3(g).)

"Section 72.304. LIABILITY AFTER DELIVERY. If reported property is delivered to the State Treasurer:

"(1) the state shall assume custody of the property and responsibility for its safekeeping; and

"(2) the person who delivers the property is relieved of liability, to the extent of the value of the property, for any claim made concerning the property. (V.A.C.S. Art. 3272a, Sec. 4(c).)

"Section 72.305. SUIT TO COMPEL DELIVERY. (a) If a person fails to deliver property to the State Treasurer in accordance with this subchapter, the attorney general shall bring an action in the name of this state on the relation of the State Treasurer to compel the delivery of the property.

"(b) Venue for a suit brought under this section is in a district court of Travis County, Texas.

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"(c) The fact that a suit seeks to compel delivery of property from more than one holder is not grounds for an objection concerning the misjoinder of parties or causes of action.

"(d) In a suit filed under this section, the attorney general must show that the notice required by Sections 72.202 and 72.204 has been given. When introduced into evidence, the verified property report, unless rebutted, is sufficient evidence that the property is abandoned and has escheated for entry of a judgment transferring the property to the State Treasurer. (V.A.C.S. Art. 3272a, Sec. 4(d).)

"Section 72.306. UNCLAIMED PROPERTY HELD BY FEDERAL GOVERNMENT. (a) If the federal government enacts a law that provides for the discovery of unclaimed property held by the federal government and that furnishes or makes that information available to the states, the State Treasurer may pay to the federal government from the escheat expense and reimbursement fund the proportional share of the necessary cost of examining records.

"(b) If the federal government delivers unclaimed property to the State Treasurer, this state shall hold the federal government harmless from claims made by owners of the property after the delivery. (V.A.C.S. Art. 3272a, Sec. 11.)

"{Sections 72.307-72.400 reserved for expansion}

"SUBCHAPTER E. DISPOSITION OF ESCHEATED PROPERTY

"Section 72.401. SALE OF PROPERTY. (a) Except as provided by Subsection (c), the State Treasurer shall sell at public sale all property other than money delivered to the State Treasurer in accordance with Section 72.302. The State Treasurer shall conduct the sale in the city in this state that the State Treasurer determines affords the most favorable market for the particular property.

"(b) The State Treasurer shall sell the property to the highest bidder. If the State Treasurer determines that the highest bid is insufficient, the State Treasurer may decline that bid and again offer the property for sale.

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"(c) The State Treasurer is not required to offer property for sale if the State Treasurer determines that the probable cost of the sale of that property exceeds its value. (V.A.C.S. Art. 3272a, Sec. 5(a).)

"Section 72.402. NOTICE OF SALE. (a) Before the 21st day preceding the day on which a public sale is held under this subchapter, the State Treasurer shall publish notice of the sale once in an English language newspaper of general circulation in the county where the sale is to be held.

"(b) The amount paid for the publication of notice shall be computed at the rate provided by Article 29, Revised Statutes, as amended. (V.A.C.S. Art. 3272a, Sec. 5(b).)

"Section 72.403. PURCHASER'S TITLE. (a) At a sale held under this subchapter, the purchaser receives title to the purchased property free from all claims of the prior owner and prior holder of the property and all persons claiming through or under them.

"(b) The State Treasurer shall execute all documents necessary to complete the transfer of title. (V.A.C.S. Art. 3272a, Sec. 5(c).)

"[Sections 72.404-72.500 reserved for expansion]

"SUBCHAPTER F. CLAIM FOR ESCHEATED PROPERTY

"Section 72.501. FILING OF CLAIM. A claim for property delivered to the State Treasurer under this chapter must be filed in accordance with procedures and on forms prescribed by the State Treasurer. (V.A.C.S. Art. 3272a, Sec. 6(a) (part).)

"Section 72.502. CONSIDERATION OF CLAIM. The State Treasurer and the attorney general or their authorized agents jointly shall consider the validity of each claim filed under this chapter. (V.A.C.S. Art. 3272a, Sec. 7(a).)

"Section 72.503. HEARING. (a) The State Treasurer and the attorney general may hold a hearing and receive evidence concerning a claim filed under this subchapter.

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"(b) If the State Treasurer and the attorney general consider that a hearing is necessary to determine the validity of a claim, both shall sign findings and a decision on the claim that state the substance of the evidence heard and the reasons for the decision. The statement is a public record.

"(c) If the State Treasurer and the attorney general determine that a claim is valid, they shall approve and sign the claim. (V.A.C.S. Art. 3272a, Sec. 7(b).)

"Section 72.504. PAYMENT OF CLAIM. (a) If a claim is for money and has been approved under this subchapter, the State Treasurer shall pay the claim.

"(b) If a claim is for personal property other than money and has been approved under this subchapter, the State Treasurer promptly shall deliver the property to the claimant unless the State Treasurer has sold the property. If the property has been sold, the State Treasurer shall pay to the claimant the full amount of the claim without deduction for any costs of administration, service charges or publication of notice. (V.A.C.S. Art. 3272a, Sec. 7(c).)

"Section 72.505. APPEAL. (a) A person aggrieved by the decision of a claim filed under this subchapter may appeal the decision before the 61st day after the day on which it was rendered.

"(b) If a claim has not been decided before the 91st day after the day on which it was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the day of filing.

"(c) An appeal under this section must be made by filing suit against the state in a district court in Travis County, Texas, or in the county in which the claimed funds were deposited. The state's immunity from suit without consent is abolished with respect to suits brought under this section.

"(d) A court shall try an action filed under this section de novo and shall apply the rules of practice of the court. (V.A.C.S. Art. 3272a, Sec. 8.)

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"Section 72.506. FEE FOR RECOVERY. (a) Except as provided by Subsection (b), a person who holds a power of attorney for a claimant and who files a claim under this subchapter on behalf of a claimant may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property recovered.

"(b) If a suit has been filed under this subchapter, the holder of the power of attorney may contract for and receive from the claimant a fee for services fixed by the court not to exceed 25 percent of the value of the property recovered. (V.A.C.S. Art. 3272a, Sec. 6(b).)

"[Sections 72.507-72.600 reserved for expansion]

"SUBCHAPTER G. ESCHEAT EXPENSE AND REIMBURSEMENT FUND

"Section 72.601. FUND. (a) The State Treasurer shall maintain a revolving fund known as the escheat expense and reimbursement fund.

"(b) The State Treasurer shall deposit into the fund:

"(1) all money delivered to the State Treasurer under this chapter; and

"(2) all proceeds from the sale of property delivered to the State Treasurer under this chapter.

"(c) If the amount in the escheat expense and reimbursement fund exceeds \$100,000, the excess shall be transferred to the General Revenue Fund, but the amount in the escheat expense and reimbursement fund may not be reduced below \$100,000 by such a transfer. (V.A.C.S. Art. 3272a, Sec. 15 (part).)

"Section 72.602. TRANSFERS FROM EXECUTIVE DEPARTMENT. The governor may transfer from any appropriation made to the executive department to the escheat expense and reimbursement fund amounts not exceeding \$20,000. (V.A.C.S. Art. 3272a, Sec. 15 (part).)

"Section 72.603. USE OF FUND. (a) One-half of the amount in the escheat expense and reimbursement fund may be used only to reimburse persons who obtain decisions or judgments under this chapter entitling them to escheated funds.

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"(b) The State Treasurer and attorney general shall use the other one-half of the amount in the fund to pay expenses necessary to enforce this chapter, including payments for examinations, travel, court costs, witness fees, publication of notices, and employment of additional personnel.

"(c) Each expenditure from the fund and each voucher for the payment of an expenditure must be approved by the State Treasurer and the attorney general. (V.A.C.S. Art. 3272a, Sec. 15 (part).)

"Section 72.604. AUDIT; APPROPRIATION. The escheat expense and reimbursement fund is subject to audit by the State Auditor and to appropriation by the legislature for enforcing this chapter. (V.A.C.S. Art. 3272a, Sec. 15 (part).)

"[Sections 72.605-72.700 reserved for expansion]

"SUBCHAPTER H. ENFORCEMENT

"Section 72.701. RULES. The State Treasurer may adopt rules necessary to carry out this chapter. (V.A.C.S. Art. 3272a, Sec. 12.)

"Section 72.702. EXAMINATION OF RECORDS. (a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the State Treasurer, the attorney general, or an authorized agent of either, at any reasonable time, may examine the books and records of any person.

"(b) The State Treasurer, the attorney general, or an agent of either may not make public any information obtained by an examination made under this section and may not use that information except in the course of a judicial proceeding, authorized by this chapter, in which the state is a party. (V.A.C.S. Art. 3272a, Sec. 9 (part).)

"Section 72.703. ADDITIONAL PERSONNEL. (a) The State Treasurer and the attorney general may employ, in the office of either official, additional personnel necessary to enforce this chapter.

"(b) The salary rate of additional personnel may not exceed the rate paid to other state employees for similar services.

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"(c) The salaries of additional personnel shall be paid in accordance with Section 72.603. (V.A.C.S. Art. 3272a, Sec. 15 (part).)

"Section 72.704. ASSISTANCE IN ENFORCEMENT. If requested by the State Treasurer or the attorney general, the State Auditor, state comptroller, banking commissioner, securities commissioner, insurance commissioner, department of public safety, or any district or county attorney shall assist the State Treasurer or attorney general in enforcing this chapter. (V.A.C.S. Art. 3272a, Sec. 9 (part).)

"Section 72.705. PENALTIES. (a) A person commits an offense if the person:

"(1) wilfully fails to file a report required by this chapter;

"(2) refuses to permit examinations of records in accordance with this chapter; or

"(3) makes a deduction from or a service charge against a dormant account or dormant deposit of funds.

"(b) An offense under this section is punishable by:

"(1) a fine of not less than \$500 or more than \$1,000;

"(2) confinement in jail for a term not to exceed six months; or

"(3) both the fine and confinement.

"(c) In addition to a criminal penalty, a person who commits an offense under Subdivision (1) or (2) of Subsection (a) is subject to a civil penalty not to exceed \$100 for each day of the failure or refusal. The attorney general shall collect the civil penalty by bringing suit on behalf of the state in a district court of Travis County, Texas. (V.A.C.S. Art. 3272a, Sec. 13.)

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"CHAPTER 73. ESCHEAT OF INACTIVE ACCOUNTS HELD BY BANKING
ORGANIZATIONS

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 73.001. DEFINITIONS

"Section 73.002. DEPOSITORY

"Section 73.003. PRESERVATION OF INACTIVE ACCOUNT

"[Sections 73.004-73.100 reserved for expansion]

"SUBCHAPTER B. NOTICE FOR INACTIVE ACCOUNTS SUBJECT TO ESCHEAT

"Section 73.101. NOTICE FOR CERTAIN INACTIVE ACCOUNTS

"Section 73.102. NOTICE MAILED TO STATE TREASURER

"Section 73.103. NOTICE THAT ACCOUNTS ARE SUBJECT TO CHAPTER

"Section 73.104. CHARGE FOR PUBLICATION OF NOTICE

"[Sections 73.105-73.200 reserved for expansion]

"SUBCHAPTER C. REPORT AND DELIVERY OF PROPERTY

"Section 73.201. REPORT; DELIVERY OF ACCOUNT

"Section 73.202. CERTIFICATION OF REPORT

"Section 73.203. RECEIPT OF REPORT; LIABILITY FOR ACCOUNT

"Section 73.204. TRUTH OF REPORT

"Section 73.205. PRESUMPTION OF INTESTATE DEATH WITHOUT HEIRS

"Section 73.206. LIST OF DEPOSITORS

"Section 73.207. TRANSFERS FROM BANKING COMMISSIONER

"[Sections 73.208-73.300 reserved for expansion]

"SUBCHAPTER D. CLAIM FOR ESCHEATED ACCOUNT

"Section 73.301. CLAIM

"Section 73.302. CLAIM FILED WITH DEPOSITORY

"[Sections 73.303-73.400 reserved for expansion]

"SUBCHAPTER E. STATE CONSERVATOR FUND

"Section 73.401. FUND

"Section 73.402. USE OF FUND

"[Sections 73.403-73.500 reserved for expansion]

"SUBCHAPTER F. ENFORCEMENT

"Section 73.501. RULES

"Section 73.502. EXAMINATION OF RECORDS

"Section 73.503. PENALTIES

Additions in text indicated by underline; deletions by [strikeouts]

"CHAPTER 73. ESCHEAT OF INACTIVE ACCOUNTS HELD BY BANKING
ORGANIZATIONS

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 73.001. DEFINITIONS. In this chapter:

"(1) 'Account' means a demand, savings, or other deposit of money, or its equivalent in banking practice, or any other evidence of indebtedness that is held by a depository for repayment to the depositor or for the depositor's order.

"(2) 'Depositor' means a person who has an ownership interest in an account. (V.A.C.S. Art. 3272b, Sec. 1 (part).)

"Section 73.002. DEPOSITORY. For the purposes of this chapter, a depository is a bank, savings and loan association, or other banking organization that:

"(1) receives and holds a deposit of money or the equivalent of money in banking practice or other personal property in this state; or

"(2) receives and holds such a deposit or other personal property in another state for a person whose last known residence is in this state. (V.A.C.S. Art. 3272b, Sec. 1 (part).)

"Section 73.003. PRESERVATION OF INACTIVE ACCOUNT. Except as provided by Section 73.104, a depository shall preserve an account that has remained inactive continuously for longer than one year without a debit or credit to the account because of an act by the depositor or an agent of the depositor, other than the depository. The depository may not by any procedure, including the imposition of a service charge, transfer, convert, or reduce such an account to the profits or assets of the depository. (V.A.C.S. Art. 3272b, Secs. 1 (part), 2.)

"[Sections 73.004-73.100 reserved for expansion]

"SUBCHAPTER B. NOTICE FOR INACTIVE ACCOUNTS SUBJECT TO ESCHEAT

"Section 73.101. NOTICE FOR CERTAIN INACTIVE ACCOUNTS. (a)
In May of each year, a depository shall publish notice concerning an account if:

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§ 73.101

"(1) the account has been inactive for at least seven years;

"(2) the location of the depositor of the account is unknown to the depository; and

"(3) the amount of the account has not been delivered to the State Treasurer in accordance with Section 73.201.

"(b) To satisfy the seven-year period of inactivity required by Subdivision (1) of Subsection (a), the account must have been inactive for a continuous period beginning not later than May 1 of the seventh year preceding the year in which notice is published.

"(c) The notice must be entitled 'Notice of the Names of Persons Appearing as the Owners of Unclaimed Amounts Held by (name and address of depository)' and must contain:

"(1) the names of the missing depositors, listed alphabetically, and the last known address of each, if any; and

"(2) a statement that if proof of ownership is presented within the nine-month period immediately following the day on which the notice is published, the unclaimed accounts will be paid to the owner of the depository, but if amounts remain unclaimed after that period, they are subject to report to and conservation by the State Treasurer under this chapter.

"(d) The notice must be published in a newspaper, as defined by Subdivision (2), Section 1, Chapter 84, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 28a, Vernon's Texas Civil Statutes), in the city or county in which the depository is located or, if such a newspaper is not published in that county, in an adjoining county.

"(e) The notice may not list the amounts credited to the accounts. (V.A.C.S. Art. 3272b, Sec. 3 (part).)

"Section 73.102. NOTICE MAILED TO STATE TREASURER. The depository shall mail to the State Treasurer:

"(1) two copies of each notice required to be published by Section 73.101;

"(2) sworn proof of publication of the notice; and

"(3) certification, under the oath of the subscribing officer, that the notice contains a complete list of the names of

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all depositors for which notice is required. (V.A.C.S. Art. 3272b, Sec. 3 (part).)

"Section 73.103. NOTICE THAT ACCOUNTS ARE SUBJECT TO CHAPTER. Publication of notice in accordance with Section 73.101 is notice by the depository and this state that the accounts of the listed depositors are subject to this chapter. (V.A.C.S. Art. 3272b, Sec. 3 (part))

"Section 73.104. CHARGE FOR PUBLICATION OF NOTICE. (a) A newspaper may not charge a rate for the publication of notice under this chapter that exceeds the rate provided by Article 29, Revised Statutes, as amended.

"(b) A depository may charge the amount paid to a newspaper for the publication of notice equally against the accounts for which notice is required. (V.A.C.S. Art. 3272b, Sec. 3 (part).)

"[Sections 73.105-73.200 reserved for expansion]

"SUBCHAPTER C. REPORT AND DELIVERY OF PROPERTY

"Section 73.201. REPORT; DELIVERY OF ACCOUNT. (a) Before May 2 of the year following the year in which notice is published under this chapter, a depository shall file with the State Treasurer:

"(1) two copies of a certified report compiled in accordance with this section; and

"(2) an amount equal to the total of the accounts listed in the report.

"(b) The report must contain information for each account required to be listed in the published notice if at the time the report is filed:

"(1) the existence and location of any depositor of the account remains unknown to the depository; and

"(2) the account remains inactive.

"(c) For accounts described by Subsection (b), the report must state:

"(1) the names of the depositors, listed alphabetically, and the last known address of each depositor;

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"(2) the identification number, if any, of each account;

"(3) the date that each account became an inactive account and the amount due to the depositor on that date;

"(4) the amount credited to each account on the day of the report; and

"(5) the date of the last transaction with each depositor.

"(d) If the amount credited to an account on the date the report is compiled is less than the amount credited to the account on the date that it became inactive, disregarding a reduction for the account's share of the cost for publication under Section 73.104, the report must contain the reason for the reduction. (V.A.C.S. Art. 3272b, Sec. 4 (part).)

"Section 73.202. CERTIFICATION OF REPORT. The officer of a depository who is responsible for certification of a report filed under this chapter shall certify under oath that:

"(1) the report is a complete and correct statement of all accounts subject to this chapter that are held by the depository;

"(2) the existence and location of listed depositors are unknown to the depository; and

"(3) the listed depositors have not asserted a claim or exercised an act of ownership with respect to the depositors' reported accounts within the preceding seven-year period. (V.A.C.S. Art. 3272b, Sec. 4 (part).)

"Section 73.203. RECEIPT OF REPORT; LIABILITY FOR ACCOUNT.

(a) When the State Treasurer receives a report and the accompanying payment in accordance with Section 73.201, the State Treasurer shall sign a receipt for and assume custody of the amount delivered.

"(b) After the State Treasurer receives a report and payment, the state is responsible for the safekeeping of the delivered amount, and the depository is relieved of all liability for any claim to the account. (V.A.C.S. Art. 3272b, Sec. 4 (part).)

"Section 73.204. TRUTH OF REPORT. A sworn report of a depository filed under this chapter or evidence of such a report

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offered under oath is prima facie evidence of the truth of the facts stated in the report. (V.A.C.S. Art. 3272b, Sec. 7 (part).)

"Section 73.205. PRESUMPTION OF INTESTATE DEATH WITHOUT HEIRS. A person is presumed to have died intestate and without heirs if the person:

"(1) owns an account reported as inactive under Section 73.201; and

"(2) has not asserted a claim to or exercised an act of ownership of the account since the report was filed. (V.A.C.S. Art. 3272b, Sec. 7 (part).)

"Section 73.206. LIST OF DEPOSITORS. (a) Before June 2 of each year, the State Treasurer shall compile and revise an alphabetical list of the names and last known addresses of the depositors listed in the reports and the amount credited to each account.

"(b) The State Treasurer shall make the list available for public inspection during all reasonable business hours. (V.A.C.S. Art. 3272b, Sec. 5 (part).)

"Section 73.207. TRANSFERS FROM BANKING COMMISSIONER. (a) The state banking commissioner shall transfer to the State Treasurer funds that were formerly owned by or deposited in liquidated depositories and that have been held by the commissioner for longer than 20 years if the location of the depositors of the funds has been unknown to the commissioner for longer than 20 years.

"(b) The state banking commissioner shall send with the transferred funds:

"(1) certification under oath by the commissioner that the funds are subject to this section;

"(2) a list of the names of the liquidated depositories; and

"(3) a list of the names and the last known addresses of the depositors of the funds and the amount credited to each depositor.

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§ 73.207

"(c) The State Treasurer shall deposit the funds delivered under this section in the state conservator fund. (V.A.C.S. Art. 3272b, Sec. 5 (part).)

"[Sections 73.208-73.300 reserved for expansion]

"SUBCHAPTER D. CLAIM FOR ESCHEATED ACCOUNT

"Section 73.301. CLAIM. (a) A person who claims an interest in property delivered to the state and deposited in the state conservator fund may file a claim:

"(1) with the State Treasurer in the same manner as a claim filed under Chapter 72; or

"(2) with the depository that delivered the property to the state.

"(b) Determinations of claims and all rights, fees, procedures, and actions with respect to a claim filed under Subdivision (1) of Subsection (a) shall be made in the same manner as a claim filed under Chapter 72 except that payments shall be made from the state conservator fund. (V.A.C.S. Art. 3272b, Sec. 6 (part).)

"Section 73.302. CLAIM FILED WITH DEPOSITORY. (a) If a claim is filed with a depository under this subchapter and the depository determines in good faith that the claim is valid, the depository may pay the amount of the claim.

"(b) If the amount paid under Subsection (a) is \$100 or less, the State Treasurer shall reimburse the depository on receipt of a written statement, subscribed and sworn to by an officer of the depository, that states:

"(1) the name and address of the person to whom payment was made; and

"(2) that the depository believes in good faith that the claim is valid.

"(c) If the amount paid under Subsection (a) is more than \$100, the State Treasurer and the attorney general shall examine the claim and any supporting affidavit or evidence of the claim. Before the State Treasurer may reimburse a depository for a claim

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under this subsection, the claim must be approved and signed by the State Treasurer and the attorney general.

"(d) The State Treasurer shall prescribe the forms and procedures for filing claims with depositories. (V.A.C.S. Art. 3272b, Sec. 6 (part).)

"[Sections 73.303-73.400 reserved for expansion]

"SUBCHAPTER E. STATE CONSERVATOR FUND

"Section 73.401. FUND. (a) The State Treasurer shall maintain a fund known as the state conservator fund.

"(b) The State Treasurer shall deposit to the credit of the state conservator fund:

"(1) all funds delivered to the State Treasurer under this chapter;

"(2) all funds held by a depository that have escheated to the state; and

"(3) the income from investments of the amount in the fund.

"(c) If the amount in the state conservator fund exceeds \$250,000, the excess shall be transferred to the available school fund, but the amount in the state conservator fund may not be reduced below \$250,000 by such a transfer.

"(d) The State Treasurer, from time to time, shall invest the amount in the state conservator fund that exceeds \$50,000 in investments approved by law for the investment of state funds. (V.A.C.S. Art. 3272b, Sec. 5 (part).)

"Section 73.402. USE OF FUND. (a) The State Treasurer shall use the state conservator fund:

"(1) to pay the claims of persons who establish their ownership of accounts delivered to the State Treasurer under this chapter; and

"(2) to maintain a revolving expense fund in the amount of \$25,000.

"(b) The amount credited to the revolving expense fund may be used only to pay expenses incurred by the State Treasurer in the enforcement of this chapter including the expenses of publications,

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forms, notices, examinations, travel, and employment of necessary personnel. (V.A.C.S. Art. 3272b, Secs. 5 (part), 6 (part).)

"[Sections 73.403-73.500 reserved for expansion]

"SUBCHAPTER F. ENFORCEMENT

"Section 73.501. RULES. The State Treasurer may adopt rules necessary to carry out this chapter. (V.A.C.S. Art. 3272b, Sec. 8 (part).)

"Section 73.502. EXAMINATION OF RECORDS. The State Treasurer may examine the records of a depository to determine if the depository is complying with this chapter. (V.A.C.S. Art. 3272b, Sec. 8 (part).)

"Section 73.503. PENALTIES. (a) A person commits an offense if the person:

"(1) wilfully fails to publish notice as required by Section 73.101;

"(2) fails to file copies of a report as required by Section 73.201; or

"(3) violates any other provision of this chapter.

"(b) An offense under this section is a misdemeanor punishable by:

"(1) a fine of not less than \$500 or more than \$1,000;

"(2) confinement in jail for a term not to exceed six months; or

"(3) both the fine and confinement.

"(c) In addition to being subject to criminal penalty, a person who commits an offense under Subsection (a) is subject to a civil penalty that may not exceed \$100 for each day of the violation. The attorney general shall collect the civil penalty for the state by bringing suit in a district court of Travis County, Texas. (V.A.C.S. Art. 3272b, Sec. 9.)

"[Chapters 74-80 reserved for expansion]

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"TITLE 7. CONDOMINIUMS

"CHAPTER 81. CONDOMINIUMS

"SUBCHAPTER A. PROVISIONS GENERALLY APPLICABLE TO CONDOMINIUMS

"Section 81.001. SHORT TITLE

"Section 81.002. DEFINITIONS

"Section 81.003. APPLICABILITY OF LOCAL ORDINANCES
AND REGULATIONS

"[Sections 81.004-81.100 reserved for expansion]

"SUBCHAPTER B. CREATION, ALTERATION, AND
TERMINATION OF CONDOMINIUMS

"Section 81.101. CREATION OF CONDOMINIUM

"Section 81.102. CONTENTS OF DECLARATION, MASTER DEED, OR MASTER
LEASE

"Section 81.103. PUBLIC RECORDS

"Section 81.104. APARTMENT OWNERSHIP

"Section 81.105. APARTMENT BOUNDARIES

"Section 81.106. APARTMENT DEEDS

"Section 81.107. INTERESTS IN COMMON ELEMENTS

"Section 81.108. PARTITION OF COMMON ELEMENTS

"Section 81.109. CONVEYANCE OF COMMON ELEMENTS

"Section 81.110. TERMINATION OF CONDOMINIUM REGIME

"[Sections 81.111-81.200 reserved for expansion]

"SUBCHAPTER C. CONDOMINIUM MANAGEMENT

"Section 81.201. AUTHORITY OF COUNCIL OF OWNERS

"Section 81.202. BYLAWS

"Section 81.203. VOTING MAJORITY

"Section 81.204. MAINTENANCE OF CONDOMINIUM

"Section 81.205. INSURANCE

"Section 81.206. DISPOSITION OF INSURANCE PROCEEDS

"Section 81.207. INSUFFICIENT INSURANCE

"Section 81.208. ASSESSMENTS DUE ON CONVEYANCE

"Section 81.209. CONDOMINIUM RECORDS

"Section 81.210. LOANS AS ELIGIBLE INVESTMENTS

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"TITLE 7. CONDOMINIUMS

"CHAPTER 81. CONDOMINIUMS

"SUBCHAPTER A. PROVISIONS GENERALLY APPLICABLE TO CONDOMINIUMS

"Section 81.001. SHORT TITLE. This chapter may be cited as the Condominium Act. (V.A.C.S. Art. 1301a, Sec. 1.)

"Section 81.002. DEFINITIONS. In this chapter:

"(1) 'Apartment' means an enclosed space, regardless of whether it is designed for residential or other use, that consists of one or more rooms in a building and that has a direct exit to a thoroughfare or to a common space that leads to a thoroughfare.

"(2) 'Building' includes each principal structure on or to be erected on real property dedicated in a declaration to a condominium regime.

"(3) 'Condominium' means a form of real property ownership that combines separate ownership of individual apartments or units with common ownership of other elements.

"(4) 'Council of owners' means all the apartment owners in a condominium project.

"(5) 'Declaration' means the instrument that establishes property under a condominium regime.

"(6) 'General common elements' means the property that is part of a condominium regime other than property that is part of or belongs to an apartment in the regime, including:

"(A) land on which the building is erected;

"(B) foundations, bearing walls and columns, roofs, halls, lobbies, stairways, and entrance, exit, and communication ways;

"(C) basements, flat roofs, yards, and gardens, except as otherwise provided;

"(D) premises for the lodging of janitors or persons in charge of the building, except as otherwise provided;

"(E) compartments or installation of central services such as power, light, gas, water, refrigeration, central heat and air, reservoirs, water tanks and pumps, and swimming pools; and

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"(F) elevators and elevator shafts, garbage incinerators, and all other devices and installations generally existing for common use.

"(7) 'Limited common elements' means a portion of the common elements allocated by unanimous agreement of a council of owners for the use of one or more but less than all of the apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and similar areas or facilities.

"(8) 'Master deed' means a deed that establishes property under a condominium regime.

"(9) 'Master lease' means a lease that establishes property under a condominium regime.

"(10) 'Project' means a plan to offer for sale or to sell real property consisting of four or more apartments, rooms, office spaces, or other units in an existing or proposed building as a condominium.

"(11) 'Property' means real property, whether leased or owned, the improvements on the property, and the incorporeal rights that are appurtenant to the property. (V.A.C.S. Art. 1301a, Sec. 2 (part).)

"Section 81.003. APPLICABILITY OF LOCAL ORDINANCES AND REGULATIONS. (a) A planning or zoning commission of a county or municipality may adopt regulations governing condominium regimes that supplement this chapter.

"(b) A local zoning ordinance must be construed to treat similar structures, lots, or parcels in a similar manner regardless of whether the property is a condominium or is leased. (V.A.C.S. Art. 1301a, Sec. 23.)

"[Sections 81.004-81.100 reserved for expansion]

Additions in text indicated by underline; deletions by ~~strikeouts~~

"SUBCHAPTER B. CREATION, ALTERATION, AND
TERMINATION OF CONDOMINIUMS

"Section 81.101. CREATION OF CONDOMINIUM. An owner or developer of an existing or a planned building establishes a condominium regime by recording a master deed, master lease, or declaration under Section 81.102. (V.A.C.S. Art. 1301a, Sec. 3.)

"Section 81.102. CONTENTS OF DECLARATION, MASTER DEED, OR MASTER LEASE. (a) A declaration, master deed, or master lease for a condominium must contain:

"(1) the legal description of the real property dedicated to the condominium regime, depicted by a plat of the property that locates and identifies by letter each existing or proposed building;

"(2) a general description of each apartment, including the square footage, location, number, and other information necessary for identification of the apartment, depicted by a plat of the floor of the building in which the apartment is located that identifies the building by letter and the floor and the apartment by number;

"(3) a general description of each area not already described that is subject to individual ownership and exclusive control, such as a garage or carport, depicted by a plat that shows the area and appropriately identifies it by letter or number;

"(4) a description of the general common elements that are not described under Subdivision 1;

"(5) a description of the limited common elements; and

"(6) each apartment's fractional or percentage interest in the entire condominium regime.

"(b) A declaration, master deed, or master lease for a condominium may contain any covenants or other matters the declarant considers appropriate. (V.A.C.S. Art. 1301a, Sec. 7(B) (part).)

"Section 81.103. PUBLIC RECORDS. (a) Each county clerk shall maintain suitable records called 'Condominium Records' in

Additions in text indicated by underline; deletions by ~~strikeouts~~

which the clerk shall record master deeds, master leases, and declarations for condominiums.

"(b) A county clerk shall record plats and other instruments in a declaration without prior approval from any other authority.

"(c) A document required or authorized by this chapter to be recorded must be recorded according to law in the real property records of the county in which the property to which the document relates is located. (V.A.C.S. Art. 1301a, Secs. 2(part), 7(A), 7(C).)

"Section 81.104. APARTMENT OWNERSHIP. (a) An owner of an apartment in a condominium regime owns it exclusively, and the owner may possess, convey, or encumber the apartment, or subject it to judicial acts, independently of the other apartments in the condominium regime.

"(b) An individual title or interest in an apartment in a condominium regime is recordable.

"(c) The entire interest in the condominium regime shall be divided among the apartments.

"(d) A person may own an apartment in a condominium regime jointly or in common with others. (V.A.C.S. Art. 1301a, Secs. 4, 5, 6 (part), 7(B) (part).)

"Section 81.105. APARTMENT BOUNDARIES. (a) The boundaries of an apartment in a condominium regime are the interior surfaces of the apartment's perimeter walls, floors, and ceilings, and the exterior surfaces of the apartment's balconies and terraces.

"(b) Except for common elements, the portions of a building on the boundaries of an apartment in a condominium regime and the airspace within those boundaries are part of the apartment.

"(c) In interpreting a legal instrument relating to an apartment or to an apartment that has been reconstructed substantially according to the original plans of the apartment, the physical boundaries of the apartment are conclusively presumed to be the proper boundaries of the apartment regardless of settling, rising, or lateral movement of the building containing the

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apartment and regardless of variances between boundaries shown on the plat of the building and the actual boundaries of the building. (V.A.C.S. Art. 1301a, Sec. 9 (part).)

"Section 81.106. APARTMENT DEEDS. A deed to an apartment in a condominium regime must:

- "(1) include by reference the plats in the declaration;
- "(2) state the encumbrances against the apartment;
- "(3) describe the apartment according to the plat; and
- "(4) state the apartment's fractional or percentage interest in the condominium regime. (V.A.C.S. Art. 1301a, Sec. 9 (part).)

"Section 81.107. INTERESTS IN COMMON ELEMENTS. An owner of an apartment in a condominium regime shares ownership of the regime's common elements with the other apartment owners. An apartment owner may use the common elements according to their intended purposes, as expressed in the plat, declaration, or bylaws of the condominium regime, without interfering with the rights of the other apartment owners. (V.A.C.S. Art. 1301a, Sec. 6 (part).)

"Section 81.108. PARTITION OF COMMON ELEMENTS. (a) The ownership of the general and the limited common elements of a condominium regime may not be judicially partitioned or divided while they are suitable for a condominium regime.

"(b) A person may not initiate an action for partition of the limited or general common elements of a condominium regime unless the mortgages on the property are paid or the consent of the mortgagees is obtained.

"(c) An agreement contrary to this section is void. (V.A.C.S. Art. 1301a, Sec. 8.)

"Section 81.109. CONVEYANCE OF COMMON ELEMENTS. An apartment in a condominium regime and the undivided interest of an apartment owner in the common elements of the regime that are attributable to the apartment may not be conveyed separately. If a conveyance of an apartment does not refer to the common elements, the undivided interest of the apartment owner in the general and the limited common elements of the regime attributable to the

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apartment is conveyed with the apartment. (V.A.C.S. Art. 1301a, Sec. 9 (part).)

"Section 81.110. TERMINATION OF CONDOMINIUM REGIME. (a) By unanimous agreement the owners of a building in a condominium regime may terminate the regime and request the county clerk of the county in which the regime is located to merge the records of the estates that comprise the condominium regime, if any creditors in whose behalf encumbrances against the building are recorded agree to accept the undivided portions of the property owned by the debtors as security.

"(b) If a condominium regime is terminated, each apartment owner owns an undivided interest in the common property that corresponds to the undivided interest previously owned by the apartment owner in the common elements.

"(c) Property that has been removed from a condominium regime may be dedicated to another condominium regime at any time. (V.A.C.S. Art. 1301a, Secs. 11, 12.)

"[Sections 81.111-81.200 reserved for expansion]

"SUBCHAPTER C. CONDOMINIUM MANAGEMENT

"Section 81.201. AUTHORITY OF COUNCIL OF OWNERS. (a) The council of owners of a condominium regime may adopt and amend bylaws.

"(b) A council of owners of a condominium regime may institute litigation on behalf of two or more apartment owners concerning a matter related to the common elements of two or more apartments. The council of owners may delegate its authority under this subsection by designating in the bylaws a person who may exercise the authority. This subsection does not limit the right of an apartment owner to bring an action in the apartment owner's own behalf. (V.A.C.S. Art. 1301a, Secs. 13 (part), 16.)

"Section 81.202. BYLAWS. The bylaws of a condominium regime govern the administration of the buildings that comprise the regime. (V.A.C.S. Art. 1301a, Sec. 13 (part).)

"Section 81.203. VOTING MAJORITY. For the purposes of this chapter, the apartment owners who own at least 51 percent of the

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interests in a condominium regime, as determined under the declaration, are a majority of the apartment owners. (V.A.C.S. Art. 1301a, Sec. 2(part).)

"Section 81.204. MAINTENANCE OF CONDOMINIUM. (a) An apartment owner in a condominium regime is responsible for the apartment owner's pro rata share of:

"(1) the expenses to administer the condominium regime and to maintain and repair the general common elements;

"(2) in proper cases, the expenses to administer the limited common elements of the buildings in the condominium regime; and

"(3) other expenses approved by the council of owners.

"(b) An apartment owner in a condominium regime is not exempted from the obligation under this section to contribute toward the expenses of the condominium regime by waiving the use of the common elements or abandoning the apartment. (V.A.C.S. Art. 1301a, Sec. 15.)

"Section 81.205. INSURANCE. (a) By resolution of a majority of the council of owners or in the manner provided or required by the declaration or bylaws, the council of owners may acquire the insurance it deems appropriate for the protection of the buildings and the apartment owners.

"(b) Insurance may be written in the name of the council of owners, or in the name of a person designated in the declaration or bylaws, as trustee for the apartment owners and their mortgagees. Each apartment owner and mortgagee of an apartment owner is a beneficiary of the policy, whether named as a beneficiary or not, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration.

"(c) The acquisition of insurance by the council of owners does not prejudice the right of an apartment owner in a condominium regime to obtain insurance for the apartment owner's own benefit. (V.A.C.S. Art. 1301a, Sec. 19.)

"Section 81.206. DISPOSITION OF INSURANCE PROCEEDS. (a) Except as provided by Subsection (b), if a building in a condominium regime is damaged by a casualty against which it is

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insured, the proceeds of the insurance policy shall be used to reconstruct the building. The council of owners or the bylaws of the condominium regime govern the conduct of the reconstruction.

"(b) If more than two-thirds of a building in a condominium regime requires reconstruction because of a casualty against which it is insured, the council of owners may elect not to reconstruct the building. Unless the council of owners unanimously agrees otherwise, the insurance proceeds shall be paid to the individual apartment owners or their mortgagees, as their interest may appear, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration. (V.A.C.S. Art. 1301a, Sec. 20.)

"Section 81.207. INSUFFICIENT INSURANCE. (a) If under Section 81.206 a damaged building in a condominium regime must be reconstructed but insurance proceeds are insufficient to pay for the cost of reconstruction, the apartment owners directly affected by the damage shall pay the difference between the cost of reconstruction and the insurance proceeds, unless the bylaws provide otherwise. Each affected apartment owner shall contribute an amount for reconstruction that is proportionate to the interest of the apartment owner in the condominium regime.

"(b) If one or more but less than a majority of the affected apartment owners refuse to make a payment required under this section, after a resolution by the majority of the affected apartment owners stating the circumstances of the case and the cost of the work, the majority may repair the damage at the expense of all apartment owners benefited by the reconstruction.

"(c) By a unanimous resolution subsequent to the date of a casualty, the apartment owners in a condominium regime who are concerned with the application of this section may elect to modify its effects. (V.A.C.S. Art. 1301a, Sec. 21.)

"Section 81.208. ASSESSMENTS DUE ON CONVEYANCE. If an apartment owner conveys the apartment and assessments against the apartment are unpaid, the apartment owner shall pay the past due assessments out of the sale price of the apartment, or the

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purchaser shall pay the assessments, in preference to any other charges against the property except:

"(1) assessments, liens, and charges in favor of this state or a political subdivision of this state for taxes on the apartment that are due and unpaid; or

"(2) an obligation due under a validly recorded mortgage. (V.A.C.S. Art. 1301a, Sec. 18.)

"Section 81.209. CONDOMINIUM RECORDS. (a) The administrator or board of administration of a condominium regime or a person appointed by the bylaws of the regime shall keep a detailed written account of the receipts and expenditures related to the building and its administration that specifies the expenses incurred by the regime.

"(b) The accounts and supporting vouchers of a condominium regime shall be made available to the apartment owners for examination on working days at convenient, established, and publicly announced hours.

"(c) The books and records of a condominium regime must comply with good accounting procedures and must be audited at least once each year by an auditor who is not associated with the condominium regime. (V.A.C.S. Art. 1301a, Sec. 14.)

"Section 81.210. LOANS AS ELIGIBLE INVESTMENTS. (a) If a fiduciary or a bank, savings and loan association, trust company, life insurance company, or other lending institution is authorized to make real estate loans, a loan on an apartment in a condominium regime and the undivided interest in the common elements of the regime that is appurtenant to the apartment is an eligible investment for the fiduciary or lending institution.

"(b) A lender may not consider the existence of a prior lien for taxes, assessments, or other similar charges that are not delinquent in determining whether a mortgage or deed of trust is a first lien on the security for a loan under this section.

"(c) For the purposes of this section, an apartment in a condominium regime and the undivided interest in the common

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elements appurtenant to the apartment are a single unit independent of the other units in the regime.

"(d) This section does not affect any otherwise applicable provision of law that limits mortgage investments based on a special fraction or percentage of the value of the mortgaged property. (V.A.C.S. Art. 1301a, Sec. 10.)

"[Chapters 82-90 reserved for expansion]

"TITLE 8. LANDLORD AND TENANT

"CHAPTER 91. PROVISIONS GENERALLY APPLICABLE TO LANDLORDS
AND TENANTS

"Section 91.001. NOTICE FOR TERMINATING CERTAIN TENANCIES

"Section 91.002. INTERRUPTION OF UTILITIES AND EXCLUSION
OF TENANT

"Section 91.003. TERMINATION OF LEASE BECAUSE OF PUBLIC INDECENCY
CONVICTION

"Section 91.004. LANDLORD'S BREACH OF LEASE; LIEN

"Section 91.005. SUBLETTING PROHIBITED

"TITLE 8. LANDLORD AND TENANT

"CHAPTER 91. PROVISIONS GENERALLY APPLICABLE TO LANDLORDS
AND TENANTS

"Section 91.001. NOTICE FOR TERMINATING CERTAIN TENANCIES.

(a) A monthly tenancy or a tenancy from month to month may be terminated by the tenant or the landlord giving notice of termination to the other.

"(b) If a notice of termination is given under Subsection (a) and if the rent-paying period is at least one month, the tenancy terminates on whichever of the following days is the later:

"(1) the day given in the notice for termination; or

"(2) one month after the day on which the notice is given.

"(c) If a notice of termination is given under Subsection (a) and if the rent-paying period is less than a month, the tenancy terminates on whichever of the following days is the later:

"(1) the day given in the notice for termination; or

"(2) the day following the expiration of the period beginning on the day on which notice is given and extending for a

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§ 91.001

number of days equal to the number of days in the rent-paying period.

"(c)¹ If a tenancy terminates on a day that does not correspond to the beginning or end of a rent-paying period, the tenant is liable for rent only up to the date of termination.

"(d)² Subsections (a), (b), and (c) do not apply if:

"(1) a landlord and a tenant have agreed in an instrument signed by both parties on a different period of notice to terminate the tenancy or that no notice is required; or

"(2) there is a breach of contract recognized by law. (V.A.C.S. Art. 5236a.)

"Section 91.002. INTERRUPTION OF UTILITIES AND EXCLUSION OF TENANT. (a) A landlord may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

"(b) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

"(1) bona fide repairs, construction, or an emergency;

"(2) removing the contents of premises abandoned by a tenant; or

"(3) changing the door locks of a tenant who is delinquent in paying at least part of the rent.

"(c) If a landlord changes the door lock of a tenant who is delinquent in paying rent, the landlord must:

"(1) place a written notice on the tenant's front door stating the name and location of the individual from whom the new key may be obtained; and

"(2) provide the new key to the tenant at any hour, regardless of whether or not the tenant pays any of the delinquent rent.

"(d) The tenant of a landlord who violates this section may:

1. So in enrolled bill; probably should read "(d)".
2. So in enrolled bill; probably should read "(e)".

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"(1) either recover possession of the premises or terminate the lease; and

"(2) recover an amount equal to the sum of his actual damages, one month's rent, and reasonable attorney's fees, less any delinquent rents or other sums for which the tenant is liable.

"(e) A provision of a lease that purports to waive a right or to exempt a party from a liability or duty under this section is void. (V.A.C.S. Art. 5236c.)

"Section 91.003. TERMINATION OF LEASE BECAUSE OF PUBLIC INDECENCY CONVICTION. (a) A landlord may terminate a lease executed or renewed after June 15, 1981, if:

"(1) the tenant or occupant of the leasehold uses the property for an activity for which the tenant or occupant or for which an agent or employee of the tenant or occupant is convicted under Chapter 43, Penal Code, as amended; and

"(2) the convicted person has exhausted or abandoned all avenues of direct appeal from the conviction.

"(b) The fee owner or an intermediate lessor terminates the lease by giving written notice of termination to the tenant or occupant within six months after the right to terminate arises under this section. The right to possess the property reverts to the landlord on the 10th day after the date the notice is given.

"(c) This section applies regardless of a term of the lease to the contrary. (V A.C.S. Art. 5236g.)

"Section 91 004. LANDLORD'S BREACH OF LEASE; LIEN. (a) If the landlord of a tenant who is not in default under a lease fails to comply in any respect with the lease agreement, the landlord is liable to the tenant for damages resulting from the failure.

"(b) To secure payment of the damages, the tenant has a lien on the landlord's nonexempt property in the tenant's possession and on the rent due to the landlord under the lease. (V.A.C.S. Art. 5236.)

"Section 91.005. SUBLETTING PROHIBITED. During the term of a lease, the tenant may not rent the leasehold to any other person without the prior consent of the landlord. (V.A.C.S. Art. 5237.)

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"CHAPTER 92. RESIDENTIAL TENANCIES

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 92.001. DEFINITIONS

"Section 92.002. APPLICATION

"Section 92.003. LANDLORD'S AGENT FOR SERVICE OF PROCESS

"Section 92.004. HARASSMENT

"Section 92.005. ATTORNEY'S FEES

"Section 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES

"Section 92.007. VENUE

"[Sections 92.008-92.050 reserved for expansion]

"SUBCHAPTER B. REPAIR OR CLOSING OF LEASEHOLD

"Section 92.051. APPLICATION

"Section 92.052. LANDLORD'S DUTY TO REPAIR OR REMEDY

"Section 92.053. BURDEN OF PROOF

"Section 92.054. CASUALTY LOSS

"Section 92.055. CLOSING THE RENTAL PREMISES

"Section 92.056. LANDLORD LIABILITY AND TENANT REMEDIES

"Section 92.057. RETALIATION BY LANDLORD

"Section 92.058. RETALIATION BY TENANT

"Section 92.059. FORCIBLE ENTRY AND DETAINER SUITS

"Section 92.060. AGENTS FOR DELIVERY OF NOTICE

"Section 92.061. EFFECT ON OTHER RIGHTS

"[Sections 92.062-92.100 reserved for expansion]

"SUBCHAPTER C. SECURITY DEPOSITS

"Section 92.101. APPLICATION

"Section 92.102. SECURITY DEPOSIT

"Section 92.103. OBLIGATION TO REFUND

"Section 92.104. RETENTION OF SECURITY DEPOSIT; ACCOUNTING

"Section 92.105. CESSATION OF OWNER'S INTEREST

"Section 92.106. RECORDS

"Section 92.107. TENANT'S FORWARDING ADDRESS

"Section 92.108. LIABILITY FOR WITHHOLDING LAST MONTH'S RENT

"Section 92.109. LIABILITY OF LANDLORD

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"SUBCHAPTER D. SECURITY DEVICES

- "Section 92.151. DEFINITIONS
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- "Section 92.157. TENANT REMEDIES
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"SUBCHAPTER E. DISCLOSURE OF OWNERSHIP AND MANAGEMENT

- "Section 92.201. DISCLOSURE OF OWNERSHIP AND MANAGEMENT
- "Section 92.202. LANDLORD'S FAILURE TO DISCLOSE INFORMATION
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- "Section 92.208. ADDITIONAL ENFORCEMENT BY LOCAL ORDINANCE

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"SUBCHAPTER F. SMOKE DETECTORS

- "Section 92.251. DEFINITION
- "Section 92.252. APPLICATION OF OTHER LAW; MUNICIPAL REGULATION
- "Section 92.253. EXEMPTIONS
- "Section 92.254. SMOKE DETECTOR
- "Section 92.255. INSTALLATION AND LOCATION IN NEW CONSTRUCTION
- "Section 92.256. INSTALLATION IN UNITS CONSTRUCTED OR OCCUPIED
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- "Section 92.257. INSTALLATION PROCEDURE
- "Section 92.258. INSPECTION AND REPAIR

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"Section 92.259. LANDLORD'S FAILURE TO INSTALL, INSPECT,
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"Section 92.260. TENANT REMEDIES

"Section 92.261. LANDLORD'S DEFENSES

"Section 92.262. AGENTS FOR DELIVERY OF NOTICE

"CHAPTER 92. RESIDENTIAL TENANCIES

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 92.001. DEFINITIONS. In this chapter:

"(1) 'Dwelling' means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

"(2) 'Landlord' means the owner, lessor, or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in an oral or written lease.

"(3) 'Lease' means any written or oral agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling.

"(4) 'Normal wear and tear' means deterioration that results from the intended use of a dwelling, including, for the purposes of Subchapter B, breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant, by a member of the tenant's household, or by a guest of the tenant.

"(5) 'Premises' means a tenant's rental unit, any area or facility the lease authorizes the tenant to use, and the appurtenances, grounds, and facilities held out for the use of tenants generally.

"(6) 'Tenant' means a person who is authorized by a lease to occupy a dwelling to the exclusion of others and, for the purposes of Subchapters D, E, and F, who is obligated under the lease to pay rent. (V.A.C.S. Arts. 5236e, Sec. 1 (part); 5236f, Sec. 1 (part); 5236h, Sec. 1 (part); 5236i, Sec. 1 (part); 5236j, Sec. 1 (part).)

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"Section 92.002. APPLICATION. This chapter applies only to the relationship between landlords and tenants of residential rental property. (V.A.C.S. Arts. 5236e, Sec. 11 (part); 5236f, Sec. 17 (part).)

"Section 92.003. LANDLORD'S AGENT FOR SERVICE OF PROCESS.

(a) In a lawsuit by a tenant under either a written or oral lease for a dwelling or in a suit to enforce a legal obligation of the owner as landlord of the dwelling, the owner's agent for service of process is determined according to this section.

"(b) If written notice of the name and business street address of the company that manages the dwelling has been given to the tenant, the management company is the owner's sole agent for service of process.

"(c) If Subsection (b) does not apply, the owner's management company, on-premise manager, or rent collector serving the dwelling is the owner's authorized agent for service of process unless the owner's name and business street address have been furnished in writing to the tenant. (V.A.C.S. Art. 5236b.)

"Section 92.004. HARASSMENT. A party who files or prosecutes a suit under Subchapter B, D, E, or F in bad faith or for purposes of harassment is liable to the defendant for one month's rent plus \$100 and for attorney's fees. (V.A.C.S. Arts. 5236f, Sec. 11; 5236h, Sec. 9; 5236i, Sec. 9; 5236j, Sec. 10.)

"Section 92.005. ATTORNEY'S FEES. (a) A party who prevails in a suit brought under Subchapter B, D, E, or F may recover the party's costs of court and reasonable attorney's fees in relation to work reasonably expended.

"(b) This section does not authorize a recovery of attorney's fees in an action brought under Subchapter D, E, or F for damages that relate to or arise from property damage, personal injury, or a criminal act. (V.A.C.S. Arts. 5236f, Sec. 10; 5236h, Sec. 10; 5236i, Sec. 10; 5236j, Sec. 11.)

"Section 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES.

(a) A landlord's duty or a tenant's remedy under Subchapter C, D,

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or E may not be waived. A landlord's duty to install a smoke detector under Subchapter F may not be waived, nor may a tenant waive a remedy for the landlord's noninstallation or waive the tenant's limited right of installation and removal.

"(b) The landlord's duty of inspection and repair under Subchapter F may be waived only by written agreement. The provisions of Subchapter B may be waived only if:

"(1) the lease is in writing;

"(2) the waiver is underlined or is in bold print in the lease or in a separate written addendum;

"(3) the waiver is specific and clearly lists the duty being waived; and

"(4) the waiver is made knowingly, voluntarily, and for consideration.

"(c) The landlord's duties and the tenant's remedies under Subchapters D and E, and the landlord's duty concerning installation, inspection, or repair under Subchapter F may be enlarged only by specific written agreement. (V.A.C.S. Arts. 5236e, Sec. 7; 5236f, Sec. 13; 5236h, Sec. 11; 5236i, Sec. 11; 5236j, Sec. 14.)

"Section 92.007. VENUE. Venue for an action under Subchapter D, E, or F is in the county in which the dwelling is located. Venue for an action under Subchapter B is in the county in which the premises are located. (V.A.C.S. Arts. 5236f, Sec. 16 (part); 5236h, Sec. 13; 5236i, Sec. 14; 5236j, Sec. 16.)

"[Sections 92.008-92.050 reserved for expansion]

"SUBCHAPTER B. REPAIR OR CLOSING OF LEASEHOLD

"Section 92.051. APPLICATION. This subchapter applies to a lease executed, entered into, renewed, or extended on or after September 1, 1979. (V.A.C.S. Art. 5236f, Sec. 17 (part).)

"Section 92.052. LANDLORD'S DUTY TO REPAIR OR REMEDY. (a) A landlord shall make a diligent effort to repair or remedy a condition if:

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"(1) the tenant specifies the condition in a notice to the person to whom or to the place where rent is normally paid;

"(2) the tenant is not delinquent in the payment of rent at the time notice is given; and

"(3) the condition materially affects the physical health or safety of an ordinary tenant.

"(b) The landlord does not have a duty to repair or remedy a condition caused during the term of the lease, including a renewal or extension, by the tenant, a member of the tenant's family, or a guest of the tenant, unless the condition was caused by normal wear and tear.

"(c) This subchapter does not require the landlord:

"(1) to furnish utilities from a utility company if as a practical matter the utility lines of the company are not reasonably available; or

"(2) to furnish security guards.

"(d) The tenant's notice under Subsection (a) must be in writing only if the tenant's lease is in writing and requires written notice. (V.A.C.S. Art. 5236f, Secs. 2, 3 (part).)

"Section 92.053. BURDEN OF PROOF. (a) Except as provided by this section, the tenant has the burden of proof in a judicial action to enforce a right resulting from the landlord's failure to repair or remedy a condition under Section 92.052.

"(b) If the landlord does not provide a written explanation for delay in performing a duty to repair or remedy on or before the fifth day after receiving from the tenant a written demand for an explanation, the landlord has the burden of proving that he made a diligent effort to repair and that a reasonable time for repair did not elapse. (V.A.C.S. Art. 5236f, Sec. 3 (part).)

"Section 92.054 CASUALTY LOSS. (a) If a condition results from an insured casualty loss, such as fire, smoke, hail, explosion, or a similar cause, the period for repair does not begin until the landlord receives the insurance proceeds.

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"(b) If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed. If the lease is terminated, the tenant is entitled only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

"(c) If after a casualty loss the rental premises are partially unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest of the tenant, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but only on judgment of a county or district court. A landlord and tenant may agree otherwise in a written lease. (V.A.C.S. Art. 5236f, Sec. 4.)

"Section 92.055. CLOSING THE RENTAL PREMISES. (a) A landlord may close a rental unit at any time by giving written notice by certified mail, return receipt requested, to the tenant and to the local health officer and local building inspector, if any, stating that:

"(1) the landlord is terminating the tenancy as soon as legally possible; and

"(2) after the tenant moves out the landlord will either immediately demolish the rental unit or no longer use the unit for residential purposes.

"(b) After a tenant receives the notice and moves out:

"(1) the local health officer or building inspector may not allow occupancy of or utility service by separate meter to the rental unit until the officer certifies that he knows of no condition that materially affects the physical health or safety of an ordinary tenant; and

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"(2) the landlord may not allow reoccupancy or reconnection of utilities by separate meter within six months after the date the tenant moves out.

"(c) If the landlord gives the tenant the notice closing the rental unit:

"(1) before the tenant gives a repair notice to the landlord, the remedies of this subchapter do not apply;

"(2) after the tenant gives a repair notice to the landlord but before the landlord has had a reasonable time to make repairs, the tenant is entitled only to the remedies under this section; or

"(3) after the tenant gives a repair notice to the landlord and after the landlord has had a reasonable time to make repairs, the tenant is entitled only to the remedies under Subdivisions (3), (4), and (5) of Subsection (b) of Section 92.056 and under this section.

"(d) If the landlord closes the rental unit after the tenant gives the landlord a notice to repair and the tenant moves out on or before the end of the rental term, the landlord must pay the tenant's actual and reasonable moving expenses, refund a pro rata portion of the tenant's rent from the date the tenant moves out, and, if otherwise required by law, return the tenant's security deposit.

"(e) A landlord who violates Subsection (b) or (d) is liable to the tenant for an amount equal to the total of one month's rent plus \$100 and attorney's fees.

"(f) The closing of a rental unit does not prohibit the occupancy of other apartments, nor does this subchapter prohibit occupancy of or utility service by master or individual meter to other rental units in an apartment complex that have not been closed under this section. If another provision of this subchapter conflicts with this section, this section controls. (V.A.C.S. Art. 5236f, Sec. 12.)

"Section 92.056. LANDLORD LIABILITY AND TENANT REMEDIES.

(a) A landlord who has a duty to repair or remedy under Section 92.052 is liable to a tenant according to this section if:

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"(1) after receiving notice to repair the landlord has had a reasonable time, considering the nature of the problem and the reasonable availability of materials, labor, and utilities from a utility company, to repair or remedy the condition; and

"(2) the landlord has not made a diligent effort to repair or remedy the condition before the eighth day after the tenant gives the landlord written notice that the tenant will terminate the lease or file suit under this subchapter unless the condition is repaired or remedied on or before the seventh day after the date the notice is given.

"(b) The tenant of a landlord who is liable under Subsection (a) may either terminate the lease or obtain one or more of the following judicial remedies:

"(1) an order directing the landlord to take reasonable action to repair or remedy the condition;

"(2) an order reducing the tenant's rent in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

"(3) a judgment against the landlord for one month's rent plus \$100;

"(4) a judgment against the landlord for the amount of the tenant's actual damages; or

"(5) court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

"(c) A tenant who elects to terminate the lease is entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later, and to a refund of the tenant's security deposit as required by law, but is not entitled to a remedy provided by Subdivision (1) or (2) of Subsection (b).

"(d) The county and district courts have exclusive jurisdiction of an action under Subdivision (1) or (2) of Subsection (b). (V.A.C.S Art. 5236f, Secs. 3 (part), 5, 6, 16 (part).)

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"Section 92.057. RETALIATION BY LANDLORD. (a) If a tenant gives a landlord a notice to repair or exercises a remedy under this subchapter for the landlord's failure to repair, the landlord may not, within six months from the date the notice to repair was given, retaliate against the tenant by:

"(1) filing an eviction proceeding except for the grounds stated in Subsection (c);

"(2) depriving the tenant of the use of the premises except for reasons authorized by law;

"(3) decreasing services to the tenant; or

"(4) increasing the tenant's rent or terminating the tenant's lease.

"(b) The landlord is not liable for retaliation under Subsection (a) if the landlord proves that the action was not made for purposes of retaliation, nor is the landlord liable, unless the action violates a prior court order under Section 92.056, for:

"(1) increasing rent under an escalation clause in a written lease for utilities, taxes, or insurance; or

"(2) increasing rent or reducing services as part of a pattern of rent increases or service reductions for an entire multidwelling project.

"(c) An eviction based on the following circumstances, which are valid grounds for eviction in any event, does not constitute retaliation:

"(1) the tenant is delinquent in rent when the landlord gives notice to vacate or files an eviction action;

"(2) the tenant, a member of the tenant's family, or a guest of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;

"(3) the tenant has materially breached the lease other than by holding over, except as provided by this subsection;

"(4) the tenant holds over after giving notice of termination or intent to vacate;

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"(5) the tenant holds over after the landlord gives notice of termination at the end of the rental term and the landlord does not receive actual notice from the tenant to repair until after the landlord gives notice of termination; or

"(6) the tenant holds over and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family, or a guest of the tenant might:

"(A) adversely affect the quiet enjoyment by other tenants or neighbors;

"(B) materially affect the health or safety of the landlord, other tenants, or neighbors; or

"(C) damage the property of the landlord, other tenants, or neighbors.

"(d) The tenant of a landlord who retaliates against the tenant under this section may recover:

"(1) one month's rent plus \$100;

"(2) reasonable moving costs; and

"(3) court costs and attorney's fees. (V.A.C.S. Art. 5236f, Sec. 7.)

"Section 92.058. RETALIATION BY TENANT. (a) If after a landlord notifies a tenant of the penalties under this section the tenant withholds payment of any part of the rent owed the landlord in retaliation for an alleged failure by the landlord to repair or remedy a condition complained of by the tenant, the tenant is liable to the landlord for:

"(1) one month's rent plus \$100; and

"(2) attorney's fees.

"(b) Notice under this section must be in writing and may be given in person, by mail, or by delivery to the premises. (V.A.C.S. Art. 5236f, Sec. 8.)

"Section 92.059. FORCIBLE ENTRY AND DETAINER SUITS. The landlord's failure to repair or remedy a condition under Section 92.052 is not a defense in an eviction proceeding, but retaliation

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under Section 92.057 is a defense to eviction. (V.A.C.S. Art. 5236f, Sec. 9.)

"Section 92.060. AGENTS FOR DELIVERY OF NOTICE. A managing agent, leasing agent, or resident manager is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter. (V.A.C.S. Art. 5236f, Sec. 1 (part).)

"Section 92.061. EFFECT ON OTHER RIGHTS. (a) The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of existing common law and other statutory law warranties and duties of landlords for maintenance, repair, security, habitability, and nonretaliation, and remedies of tenants for a violation of those warranties and duties. However, Subchapter C is cumulative of this subchapter.

"(b) This subchapter does not affect a cause of action for personal injuries or property damages. (V.A.C.S. Art. 5236f, Sec. 14.)

"[Sections 92.062-92.100 reserved for expansion]

"SUBCHAPTER C. SECURITY DEPOSITS

"Section 92.101. APPLICATION. This subchapter applies to a lease executed or entered into after September 1, 1973. (V.A.C.S. Art. 5236e, Sec. 11 (part).)

"Section 92.102. SECURITY DEPOSIT. A security deposit is any advance of money, other than an advance payment of rent, that is intended primarily to secure performance under a lease of a dwelling. (V.A.C.S. Art. 5236e, Sec. 1 (part).)

"Section 92.103. OBLIGATION TO REFUND. (a) Except as provided by Section 92.107, the landlord shall refund a security deposit to the tenant on or before the 30th day after the date the tenant surrenders the premises.

"(b) A requirement that a tenant give advance notice of surrender as a condition for refunding the security deposit is effective only if the requirement is underlined or is printed in conspicuous bold print in the lease.

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"(c) The tenant's claim to the security deposit takes priority over the claim of any creditor of the landlord except a trustee in bankruptcy. (V.A.C.S. Art. 5236e, Secs. 2(a), (b) (part).)

"Section 92.104. RETENTION OF SECURITY DEPOSIT; ACCOUNTING.

(a) Before returning a security deposit, the landlord may deduct from the deposit damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease.

"(b) The landlord may not retain any portion of a security deposit to cover normal wear and tear.

"(c) If the landlord retains all or part of a security deposit under this section, the landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not required to give the tenant a description and itemized list of deductions if:

"(1) the tenant owes rent when he surrenders possession of the premises; and

"(2) there is no controversy concerning the amount of rent owed. (V.A.C.S. Art. 5236e, Secs. 3(a) (part), (b).)

"Section 92.105. CESSATION OF OWNER'S INTEREST. (a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, or otherwise, the new owner is liable for the return of security deposits according to this subchapter from the date title to the premises is acquired.

"(b) The person who no longer owns an interest in the rental premises remains liable for a security deposit received while the person was the owner until the new owner delivers to the tenant a signed statement acknowledging that the new owner has received and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit.

"(c) Subsection (a) does not apply to a real estate mortgage lienholder who acquires title by foreclosure. (V.A.C.S. Art. 5236e, Sec. 5.)

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"Section 92.106. RECORDS. The landlord shall keep accurate records of all security deposits. (V.A.C.S. Art. 5236e, Sec. 2(b) (part).)

"Section 92.107. TENANT'S FORWARDING ADDRESS. (a) The landlord is not obligated to return a tenant's security deposit or give the tenant a written description of damages and charges until the tenant gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit.

"(b) The tenant does not forfeit the right to a refund of the security deposit or the right to receive a description of damages and charges merely for failing to give a forwarding address to the landlord. (V.A.C.S. Art. 5236e, Sec. 6(a).)

"Section 92.108. LIABILITY FOR WITHHOLDING LAST MONTH'S RENT. (a) The tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.

"(b) A tenant who violates this section is presumed to have acted in bad faith. A tenant who in bad faith violates this section is liable to the landlord for an amount equal to three times the rent wrongfully withheld and the landlord's reasonable attorney's fees in a suit to recover the rent. (V.A.C.S. Art. 5236e, Sec. 6(b).)

"Section 92.109. LIABILITY OF LANDLORD. (a) A landlord who in bad faith retains a security deposit in violation of this subchapter is liable for an amount equal to the sum of \$100, three times the portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees in a suit to recover the deposit.

"(b) A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of this subchapter:

"(1) forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; and

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"(2) is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit.

"(c) In an action brought by a tenant under this subchapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

"(d) A landlord who fails either to return a security deposit or to provide a written description and itemization of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith. (V.A.C.S. Art. 5236e, Secs. 3(a) (part), 4.)

"[Sections 92.110-92.150 reserved for expansion]

"SUBCHAPTER D. SECURITY DEVICES

"Section 92.151. DEFINITIONS. In this subchapter:

"(1) 'Deadbolt lock' means a deadbolt lock in a door, with the lock operated from the exterior by a key and from the interior without a key by knob or lever.

"(2) 'Doorknob lock' means a lock in a doorknob, with the lock operated from the exterior by a key and from the interior without a key.

"(3) 'Night latch' means a door chain latch or a door lock, with the lock operated without a key and only from the interior by chain, knob, or lever.

"(4) 'Pin lock' means a sliding glass door lock, with the lock operated without a key and only from the interior by inserting a pin or rod to prevent movement.

"(5) 'Window latch' means a lock on a window, with the lock operated without a key and only from the interior. (V.A.C.S. Art. 5236h, Sec. 1 (part).)

"Section 92.152. SECURITY DEVICE. A latch or lock qualifies as a security device under this subchapter if it is acceptable to a landlord and a tenant, or if it is an operable window latch, deadbolt lock, night latch, or pin lock selected by the landlord. (V.A.C.S. Art. 5236h, Sec. 1 (part).)

"Section 92.153. DUTY TO INSTALL, CHANGE, OR REKEY. (a) The landlord shall install, change, or rekey a security device

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according to this subchapter after the landlord receives a request from the tenant of a dwelling. If the tenant's lease is in writing, the lease may require the request to be written.

"(b) The landlord may select how and where a security device is installed in a tenant's dwelling. The landlord's obligation under Subsection (a) is limited to installing:

"(1) one window latch on each exterior window;

"(2) one pin lock on each exterior sliding glass door; and

"(3) one deadbolt lock and one night latch on each exterior door other than a sliding glass door, screen door, or garage door, but including a door between the living area and a garage.

"(c) A tenant may require a security device to be changed or rekeyed an unlimited number of times.

"(d) Before complying with a request to install, change, or rekey a security device, the landlord may require all the tenants of a dwelling to approve the request.

"(e) The landlord must comply with the request to install, change, or rekey within a reasonable time, which is presumed to be before the 15th day after the date the request is received. The landlord may rebut the presumption by proving that despite the diligence of the landlord's representative a longer time is reasonable because:

"(1) without the fault of the landlord or his representative the landlord did not know of the tenant's request;

"(2) the landlord required a cotenant to approve the request, and the cotenant delayed approval or did not approve;

"(3) the tenant did not pay in advance charges requested by the landlord and authorized by Section 92.154;

"(4) materials, labor, or utilities were unavailable; or

"(5) the delay was caused by circumstances beyond the landlord's control, including the illness or death of the landlord or a member of the landlord's family. (V.A.C.S. Art. 5236h, Secs. 1 (part), 2, 3, 6(b).)

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"Section 92.154. PAYMENT OF COSTS. (a) A tenant who requests the landlord to install, change, or rekey a security device under Subsection (a) of Section 92.153 must pay the total cost to the landlord for complying with the request, even though the work is performed by the landlord's employees or by an independent contractor selected by the landlord, except the landlord may not charge the tenant for any part of the cost to:

"(1) install a window latch if there has not been a window latch on the window during the tenant's occupancy;

"(2) install a deadbolt lock if there has not been either a deadbolt lock or a doorknob lock on the door during the tenant's occupancy; or

"(3) install a pin lock if there has not been a pin lock or other operable lock on the sliding glass door during the tenant's occupancy.

"(b) The landlord may not charge a tenant more than the total cost for labor, materials, taxes, and extra keys. If the landlord's employees perform the work, the cost may include a reasonable charge for overhead but may not include a profit to the landlord.

"(c) The landlord may require advance payment of charges authorized by this section. (V.A.C.S. Art. 5236h, Sec. 4.)

"Section 92.155. REMOVAL OF SECURITY DEVICE BY TENANT. A security device installed, changed, or rekeyed under this subchapter becomes a fixture of the dwelling, and the tenant may not remove the security device or have it removed without the permission of the landlord. A written lease may require the landlord's permission to be in writing. (V.A.C.S. Art. 5236h, Sec. 5.)

"Section 92.156. LANDLORD'S FAILURE TO COMPLY. A landlord who does not comply with a request to install, change, or rekey a security device in the manner and within the time required by Section 92.153 is liable according to this subchapter if:

"(1) the tenant gives the landlord written notice that if the landlord does not comply with the request before the eighth day

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after the date the landlord receives the notice the tenant may exercise the remedies provided by this subchapter; and

"(2) the landlord does not comply with the tenant's request before the eighth day after the date the tenant gave the landlord the notice. (V.A.C.S. Art. 5236h, Sec. 6(a).)

"Section 92.157. TENANT REMEDIES. The tenant of a landlord who is liable under Section 92.156 may:

"(1) if the tenant is in possession of the dwelling, obtain a court order directing the landlord to install, change, or rekey a security device as requested by the tenant under this subchapter;

"(2) obtain a judgment against the landlord for actual damages suffered by the tenant because of the landlord's violation;

"(3) obtain a judgment against the landlord for one month's rent plus \$100;

"(4) obtain a judgment against the landlord for court costs and attorney's fees; and

"(5) unilaterally terminate the lease without court proceedings. (V.A.C.S. Art. 5236h, Sec. 8.)

"Section 92.158. LANDLORD'S DEFENSES. The landlord has a defense to liability under Section 92.156 if:

"(1) the tenant owes rent on the date the tenant gives a request under Subsection (a) of Section 92.153 or the notice required by Section 92.156; or

"(2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.154. (V.A.C.S. Art. 5236h, Sec. 7.)

"Section 92.159. AGENTS FOR DELIVERY OF NOTICE. A managing or leasing agent, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter. (V.A.C.S. Art. 5236h, Sec. 1 (part).)

"Section 92.160. EFFECT ON OTHER LANDLORD DUTIES AND TENANT REMEDIES. The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of common law, other statutory

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law, and local ordinances relating to a residential landlord's duty to install, change, or rekey security devices at the request of a tenant. However, this subchapter does not affect a duty of a landlord or a remedy of a tenant under Subchapter B. (V.A.C.S. Art. 5236h, Sec. 12.)

"[Sections 92.161-92.200 reserved for expansion]

"SUBCHAPTER E. DISCLOSURE OF OWNERSHIP AND MANAGEMENT

"Section 92.201. DISCLOSURE OF OWNERSHIP AND MANAGEMENT.

(a) A landlord shall disclose to a tenant according to this subchapter:

"(1) the name and either a street or post office box address of the holder of record title, according to the deed records in the county clerk's office, of the dwelling rented by the tenant; and

"(2) if an entity located off-site from the tenant's dwelling is primarily responsible for managing the dwelling, the name and street address of the management company.

"(b) Disclosure under Subsection (a) must be made by:

"(1) giving the information in writing to the tenant on or before the seventh day after the day the landlord receives the tenant's request for the information;

"(2) continuously posting the information in a conspicuous place in the dwelling or the office of the on-site manager or on the outside of the entry door to the office of the on-site manager on or before the seventh day after the date the landlord receives the tenant's request for the information; or

"(3) including the information in a copy of the tenant's lease or in written rules given to the tenant before the tenant requests the information.

"(c) Disclosure of information may be made under Subdivision (1) or (2) of Subsection (b) before the tenant requests the information.

"(d) A correction to the information may be made by any of the methods authorized for providing the information.

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"(e) For the purposes of this section, an owner or property manager may disclose either an actual name or names or an assumed name if an assumed name certificate has been recorded with the county clerk. (V.A.C.S. Art. 5236i, Secs. 1 (part), 2, 3.)

"Section 92.202. LANDLORD'S FAILURE TO DISCLOSE INFORMATION.

(a) A landlord is liable to a tenant according to this subchapter if:

"(1) after the tenant makes a request for information under Section 92.201, the landlord does not provide the information; and

"(2) the landlord does not give the information to the tenant before the eighth day after the date the tenant gives the landlord written notice that the tenant may exercise his remedies under this subchapter if the landlord does not comply with the tenant's request for the information within seven days.

"(b) If the tenant's lease is in writing, the lease may require the tenant's initial request for information to be written. (V.A.C.S. Art. 5236i, Sec. 4.)

"Section 92.203. LANDLORD'S FAILURE TO CORRECT INFORMATION.

A landlord who has provided information under Subdivision (2) or (3) of Subsection (b) of Section 92.201 is liable to a tenant according to this subchapter if:

"(1) the information becomes incorrect because a name or address changes; and

"(2) the landlord fails to correct the information on or before the seventh day after the date the tenant gives the landlord written notice that the tenant may exercise his remedies under this subchapter if the corrected information is not provided within seven days. (V.A.C.S. Art. 5236i, Sec. 5.)

"Section 92.204. BAD FAITH VIOLATION. A landlord acts in bad faith and is liable according to this subchapter if the landlord gives an incorrect name or address under Subsection (a) of Section 92.201 by wilfully:

"(1) disclosing incorrect information under Subdivision (1) or (2) of Subsection (b) of Section 92.202; or

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"(?) failing to correct information given under Subdivision (1) or (2) of Subsection (b) of Section 92.201 that the landlord knows is incorrect. (V.A.C.S. Art. 5236i, Sec. 6.)

"Section 92.205. TENANT REMEDIES. A tenant of a landlord who is liable under Section 92.202, 92.203, or 92.204 may obtain or exercise one or more of the following remedies:

"(1) a court order directing the landlord to make a disclosure required by this subchapter;

"(2) a judgment against the landlord for an amount equal to the tenant's actual costs in discovering the information required to be disclosed by this subchapter;

"(3) a judgment against the landlord for one month's rent plus \$100;

"(4) a judgment against the landlord for court costs and attorney's fees; and

"(5) unilateral termination of the lease without a court proceeding. (V.A.C.S. Art. 5236i, Sec. 8.)

"Section 92.206. LANDLORD'S DEFENSE. A landlord has a defense to liability under Section 92.202 or 92.203 if the tenant owes rent on the date the tenant gives a notice required by either of those sections. Rent delinquency is not a defense for a violation of Section 92.204. (V.A.C.S. Art. 5236i, Sec. 7.)

"Section 92.207. AGENTS FOR DELIVERY OF NOTICE. A managing or leasing agent, whether residing or maintaining an office on-site or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter. (V.A.C.S. Art. 5236i, Sec. 1 (part).)

"Section 92.208. ADDITIONAL ENFORCEMENT BY LOCAL ORDINANCE. The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of the common law, other statutory law, and local ordinances relating to the disclosure of ownership and management of a dwelling by a landlord to a tenant. However, this subchapter does not prohibit the adoption of a local ordinance that

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conforms to this subchapter but which contains additional enforcement provisions. (V.A.C.S. Art. 5236i, Sec. 12.)

"[Sections 92.209-92.250 reserved for expansion]

"SUBCHAPTER F. SMOKE DETECTORS

"Section 92.251. DEFINITION. In this subchapter, 'dwelling unit' means a home, mobile home, duplex unit, apartment unit, condominium unit, or any dwelling unit in a multiunit residential structure. It also means a 'dwelling' as defined by Section 92.001. (V.A.C.S. Art. 5236j, Sec. 1 (part).)

"Section 92.252. APPLICATION OF OTHER LAW; MUNICIPAL REGULATION. The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of common law, other statutory law, and local ordinances regarding a residential landlord's duty to install, inspect, or repair a smoke detector in a dwelling unit. However, this subchapter does not:

"(1) affect a local ordinance adopted before September 1, 1981, that requires landlords to install smoke detectors in new or remodeled dwelling units before September 1, 1981, if the ordinance conforms with or is amended to conform with this subchapter;

"(2) otherwise limit or prevent adoption of a local ordinance relating to building or housing codes or prevent the adoption of a local ordinance that conforms to this subchapter but which contains additional enforcement provisions. (V.A.C.S. Art. 5236j, Sec. 15 (part).)

"Section 92.253. EXEMPTIONS. (a) This subchapter does not apply to:

"(1) a dwelling unit that is occupied by its owner, no part of which is leased to a tenant;

"(2) a dwelling unit in a building five or more stories in height in which smoke detectors are required or regulated by local ordinance; or

"(3) a nursing or convalescent home licensed by the Texas Department of Health and certified to meet the Life Safety Code under federal law and regulations.

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"(b) Notwithstanding this subchapter, a person licensed by the State Board of Insurance to install fire alarms or fire detection devices under Article 5.43-2, Insurance Code, shall comply with that article when installing smoke detectors. (V.A.C.S. Art. 5236j, Secs. 12, 13.)

"Section 92.254. SMOKE DETECTOR. (a) A smoke detector must be:

"(1) designed to detect both the visible and invisible products of combustion;

"(2) designed with an alarm audible to the bedrooms it serves;

"(3) powered by battery, alternating current, or other power source;

"(4) tested and listed for use as a smoke detector by Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or United States Testing Company, Inc.; and

"(5) in good working order.

"(b) The power system and installation procedure of a security device that is electrically operated rather than battery operated must comply with applicable local ordinances. (V.A.C.S. Art. 5236j, Secs. 1 (part), 2(b) (part).)

"Section 92.255. INSTALLATION AND LOCATION IN NEW CONSTRUCTION. (a) Before the first tenant takes possession of a dwelling unit, the landlord shall install at least one smoke detector outside, but in the vicinity of, each separate bedroom in the dwelling unit, except:

"(1) if the dwelling unit is designed to use a single room for dining, living, and sleeping, the smoke detector must be located inside the room;

"(2) if the bedrooms are served by the same corridor, at least one smoke detector must be installed in the corridor in the immediate vicinity of the bedrooms; and

"(3) if at least one bedroom is located on a level above the living and cooking area, the smoke detector for the bedrooms must

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be placed in the center of the ceiling directly above the top of the stairway.

"(b) In this section, 'bedroom' means a room designed with the intent that it be used for sleeping purposes. (V.A.C.S. Art. 5236j, Secs. 1 (part), 2(a), 2(b) (part).)

"Section 92.256. INSTALLATION IN UNITS CONSTRUCTED OR OCCUPIED ON OR BEFORE SEPTEMBER 1, 1981. (a) If the dwelling unit was occupied as a residence on or before September 1, 1981, or the building permit for the unit was issued on or before that date, the landlord shall install at least one smoke detector in accordance with Sections 92.255 and 92.257 on or before September 1, 1984.

"(b) Before September 1, 1984, a tenant may install a battery-operated smoke detector in the tenant's dwelling unit without the landlord's prior consent if the installation is made according to Sections 92.255 and 92.257. When the tenant's lease terminates, including after a renewal or extension, the tenant may remove the smoke detector, but the tenant is liable to the landlord for any unnecessary damages to the dwelling unit caused by the removal. (V.A.C.S. Art. 5236j, Secs. 1 (part), 3.)

"Section 92.257. INSTALLATION PROCEDURE. (a) Subject to Subsections (b) and (c), a smoke detector must be installed according to the manufacturer's recommended procedures.

"(b) A smoke detector must be installed on a ceiling or wall. If on a ceiling, it must be no closer than six inches to a wall. If on a wall, it must be no closer than six inches and no farther than 12 inches from the ceiling.

"(c) A smoke detector may be located other than as required by Subsection (b) if a local ordinance or a local or state fire marshal approves. (V.A.C.S. Art. 5236j, Sec. 2(b) (part).)

"Section 92.258. INSPECTION AND REPAIR. (a) The landlord shall inspect and repair a smoke detector according to this section.

"(b) The landlord shall determine that the smoke detector is in good working order by following the recommended test procedures of the manufacturer for the particular model:

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"(1) at the beginning of a tenant's possession if the dwelling unit contains a smoke detector; or

"(2) at the time of installation if the landlord installs the smoke detector in the dwelling unit after the tenant has taken possession.

"(c) During the term of a lease or during a renewal or extension, the landlord has a duty to inspect and repair a smoke detector, but only if the tenant gives the landlord notice of a malfunction or requests to the landlord that the smoke detector be inspected or repaired. This duty does not exist with respect to damage or a malfunction caused by the tenant, the tenant's family, or the tenant's guests during the term of the lease or a renewal or extension, except that the landlord has a duty to repair or replace the smoke detector if the tenant pays in advance the reasonable repair or replacement cost, including labor, materials, taxes, and overhead.

"(d) The landlord must comply with the tenant's request for inspection or repair within a reasonable time, considering the availability of material, labor, and utilities.

"(e) The landlord has met the duty to inspect and repair if the smoke detector is in good working order after the landlord follows the recommended test procedures of the manufacturer for the particular model.

"(f) The landlord is not obligated to provide batteries for a battery-operated smoke detector after a tenant takes possession if the smoke detector was in good working order at the time the tenant took possession. (V.A.C.S. Art. 5236j, Secs. 1 (part), 4, 5.)

"Section 92.259. LANDLORD'S FAILURE TO INSTALL, INSPECT, OR REPAIR. (a) A landlord is liable according to this subchapter if:

"(1) after the tenant requested the landlord to install, inspect, or repair a smoke detector in the tenant's dwelling unit as required by this subchapter, the landlord did not install the smoke detector or inspect or repair the smoke detector within a

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reasonable time after the tenant's notice of malfunction or request for repair, considering the availability of materials, labor, and utilities; and

"(2) the landlord does not install, inspect, or repair the smoke detector on or before the seventh day after the date the tenant gives the landlord written notice that the tenant may exercise his remedies under this subchapter if the landlord does not comply with the request within seven days.

"(b) If the tenant's lease is in writing, the lease may require the tenant to make the initial request for installation, inspection, or repair in writing. (V.A.C.S. Art. 5236j, Secs. 6, 7.)

"Section 92.260. TENANT REMEDIES. A tenant of a landlord who is liable under Section 92.259 may obtain or exercise one or more of the following remedies:

"(1) a court order directing the landlord to comply with the tenant's request;

"(2) a judgment against the landlord for damages suffered by the tenant because of the landlord's violation;

"(3) a judgment against the landlord for one month's rent plus \$100;

"(4) a judgment against the landlord for court costs and attorney's fees; and

"(5) unilateral termination of the lease without a court proceeding. (V.A.C.S. Art. 5236j, Sec. 9.)

"Section 92.261. LANDLORD'S DEFENSES. The landlord has a defense to liability under Section 92.259 if:

"(1) on the date the tenant gives the notice required by Section 92.259 the tenant has not paid all rent due from the tenant; or

"(2) on the date the tenant terminates the lease or files suit the tenant has not fully paid costs requested by the landlord and authorized by Section 92.258. (V.A.C.S. Art. 5236j, Sec. 8.)

"Section 92.262. AGENTS FOR DELIVERY OF NOTICE. A managing or leasing agent, whether residing or maintaining an office on-site

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or off-site, is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter. (V.A.C.S. Art. 5236j, Sec. 1 (part).)

"[Chapters 93-100 reserved for expansion]

"TITLE 9. TRUSTS

"SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO TRUSTS

"CHAPTER 101. PROVISIONS GENERALLY APPLICABLE TO TRUSTS

"Section 101.001. CONVEYANCE BY TRUSTEE

"Section 101.002. PAYMENT OF MONEY TO TRUSTEE

"TITLE 9. TRUSTS

"SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO TRUSTS

"CHAPTER 101. PROVISIONS GENERALLY APPLICABLE TO TRUSTS

"Section 101.001. CONVEYANCE BY TRUSTEE. (a) If property is conveyed or transferred to a trustee in trust but the conveyance or transfer does not identify the trust or disclose the names of the beneficiaries, the trustee may convey, transfer, or encumber the title of the property without subsequent question by a person who claims to be a beneficiary under the trust or who claims by, through, or under an undisclosed beneficiary

"(b) Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee. (V.A.C.S. Art. 7425a.)

"Section 101.002. PAYMENT OF MONEY TO TRUSTEE. (a) A person who actually and in good faith pays to a trustee money that the trustee is authorized to receive is not responsible for the proper application of the money according to the trust.

"(b) A right or title derived from the trustee in consideration of the monetary payment may not be impeached or questioned because of the trustee's misapplication of the money. (V.A.C.S. Art. 7425b.)

"[Chapters 102-110 reserved for expansion]

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"SUBTITLE B. TEXAS TRUST ACT: CREATION, OPERATION, AND
TERMINATION OF TRUSTS

"CHAPTER 111. GENERAL PROVISIONS

"Section 111.001. SHORT TITLE

"Section 111.002. TRUSTS SUBJECT TO THIS SUBTITLE

"Section 111.003. DEFINITIONS

"Section 111.004. REENACTMENT OF COMMON LAW

"SUBTITLE B. TEXAS TRUST ACT: CREATION, OPERATION, AND
TERMINATION OF TRUSTS

"CHAPTER 111. GENERAL PROVISIONS

"Section 111.001. SHORT TITLE. This subtitle may be cited
as the Texas Trust Act. (V.A.C.S. Art. 7425b-1.)

"Section 111.002. TRUSTS SUBJECT TO THIS SUBTITLE. For the
purposes of this subtitle, a 'trust' is an express trust only and
does not include:

"(1) a resulting or constructive trust;

"(2) a Massachusetts trust or similar business trust;

"(3) a security instrument such as a deed of trust,
mortgage, or conditional sales contract; or

"(4) an instrument in which a person is merely a nominee for
another person without a disclosed beneficiary and active trust
duties. (V.A.C.S. Art. 7425b-2.)

"Section 111.003. DEFINITIONS. In this subtitle:

"(1) 'Affiliate' means a person directly or indirectly
controlling, controlled by, or under common control with another
person, including a person with whom a trustee has an express or
implied agreement regarding the direct or indirect purchase of
trust investments by each from the other, except a broker or stock
exchange.

"(2) 'Beneficiary' means a person entitled to receive a
benefit from a trust.

"(3) 'Income beneficiary' means a person for whom income is
currently accumulated, to whom income is currently payable, or who
is entitled to current beneficial use of principal for a time prior
to its distribution.

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"(4) 'Person' means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, an unincorporated organization, or two or more persons having a joint or common interest.

"(5) 'Relative' means a spouse or, whether by blood or adoption, an ancestor, descendant, brother, or sister.

"(6) 'Remainderman' means a person ultimately entitled to the principal of a trust, regardless of whether the person is named or designated in the transaction establishing the principal or is determined by law.

"(7) 'Trustee' means a person holding property in trust as trustee.

"(8) 'Trustee's commission' means a fee of a trustee for services rendered, other than the trustee's compensation, including a fee for extraordinary services, acceptance of the trust, distribution of the trust property, termination of the trust estate, and all other similar fees.

"(9) 'Trustee's compensation' means the normal, recurring fee of a trustee for services rendered in managing and administering a trust estate, regardless of the manner of its computation.

"(10) 'Trustor' means the maker, creator, donor, settlor, or grantor of a trust and the testator or testatrix of a will containing trust provisions. (V.A.C.S. Art. 7425b-4 (part).)

"Section 111.004. REENACTMENT OF COMMON LAW. If the law codified in this subtitle repealed a statute that abrogated or restated a common-law rule, that common-law rule is reestablished, except as the contents of the rule are changed by this subtitle. (V.A.C.S. Art. 7425b-45.)

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"CHAPTER 112. CREATION, VALIDITY, MODIFICATION, AND TERMINATION

"SUBCHAPTER A. CREATION

"Section 112.001. METHODS OF CREATING A TRUST

"Section 112.002. STATUTE OF FRAUDS

"Section 112.003. CAPACITY OF TRUSTOR

"[Sections 112.004-112.030 reserved for expansion]

"SUBCHAPTER B. VALIDITY

"Section 112.031. TRUST PURPOSES

"Section 112.032. ACTIVE AND PASSIVE TRUSTS

"Section 112.033. ESTATE OF BENEFICIARY

"[Sections 112.034-112.050 reserved for expansion]

"SUBCHAPTER C. REVOCATION, MODIFICATION, AND TERMINATION

"Section 112.051. REVOCATION BY TRUSTOR

"Section 112.052. DISPOSITION OF TRUST PROPERTY ON FAILURE
OF A TRUST

"CHAPTER 112. CREATION, VALIDITY, MODIFICATION, AND TERMINATION

"SUBCHAPTER A. CREATION

"Section 112.001. METHODS OF CREATING A TRUST. A trust may
be created by:

"(1) a property owner's written declaration that the owner
holds the property as trustee for another person or for the owner
and another person;

"(2) a property owner's written inter vivos transfer of the
property to another person as trustee for the transferor or a third
person;

"(3) a property owner's testamentary transfer to another
person as trustee for a third person;

"(4) an appointment under a power of appointment to another
person as trustee for the donee of the power or for a third person;
or

"(5) a promise to another person whose rights under the
promise are to be held in trust for a third person. (V.A.C.S. Art.
7425b-7 (part).)

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"Section 112.002. STATUTE OF FRAUDS. A trust in real property is invalid unless the trust is established by an instrument:

"(1) that is signed by the trustor or by an agent of the trustor who has written authority to sign for the trustor; or

"(2) under which the trustee claims the trust estate. (V.A.C.S. Art. 7425b-7 (part).)

"Section 112.003. CAPACITY OF TRUSTOR. A person has the same capacity to create a trust by declaration, inter vivos or testamentary transfer, appointment, or promise that the person has to transfer, will, appoint, or contract free of trust. (V.A.C.S. Art. 7425b-3 (part).)

"[Sections 112.004-112.030 reserved for expansion]

"SUBCHAPTER B. VALIDITY

"Section 112.031. TRUST PURPOSES. A trust may be created for any purpose that is not illegal. (V.A.C.S. Art. 7425b-3 (part).)

"Section 112.032. ACTIVE AND PASSIVE TRUSTS. (a) Except as provided by Subsection (b), a person who because of a transfer or devise is entitled to the actual possession of real property and to receive its rents and profits has a legal estate in the property of the same quality, extent, and duration and subject to the same conditions, as the person's beneficial interest in the property.

"(b) The estate of a trustee in real property held in a trust existing before April 19, 1943, is not divested if the trustee's title is not merely nominal, but is connected with or subject to a power of actual disposition or management in relation to the property. (V.A.C.S. Arts. 7425b-5, 7425b-6.)

"Section 112.033. ESTATE OF BENEFICIARY. (a) A grantee or devisee of real or personal property subject to a trust has a legal estate in the property against every other person except the trustee or someone lawfully claiming under the trustee.

"(b) A natural person may be both a beneficiary and a trustee of a testamentary trust.

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"(c) Legal and equitable titles to a trust estate do not merge even though a beneficiary of the trust is also a cotrustee. (V.A.C.S. Arts. 7425b-7 (part), 7425b-43.)

"[Sections 112.034-112.050 reserved for expansion]

"SUBCHAPTER C. REVOCATION, MODIFICATION, AND TERMINATION

"Section 112.051. REVOCATION BY TRUSTOR. A living trustor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it. (V.A.C.S. Art. 7425b-41.)

"Section 112.052. DISPOSITION OF TRUST PROPERTY ON FAILURE OF A TRUST. Notwithstanding Section 112.051, in creating a trust a trustor may provide for disposition of the trust property on the failure, termination, or revocation of the trust. (V.A.C.S. Art. 7425b-42.)

"CHAPTER 113. ADMINISTRATION

"SUBCHAPTER A. POWERS OF TRUSTEE

- "Section 113.001. LIMITATION OF POWERS
- "Section 113.002. GENERAL POWERS
- "Section 113.003. REAL PROPERTY MANAGEMENT
- "Section 113.004. SALE OF PROPERTY
- "Section 113.005. REAL PROPERTY LEASES
- "Section 113.006. INSURANCE
- "Section 113.007. CLAIMS
- "Section 113.008. WORTHLESS PROPERTY
- "Section 113.009. MANAGEMENT OF SECURITIES
- "Section 113.010. STOCK OR OTHER PROPERTY HELD IN THE NAME
OF A NOMINEE
- "Section 113.011. PAYMENT OF TAXES
- "Section 113.012. EMPLOYMENT OF AGENTS
- "Section 113.013. PROVISION FOR SURVIVING SPOUSE OR MINOR
CHILD; FUNERAL EXPENSES
- "Section 113.014. AUTHORITY TO BORROW
- "Section 113.015. ANCILLARY TRUSTEE

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"Section 113.016. DEPOSITS BY CORPORATE TRUSTEE WITH ITSELF

"Section 113.017. IMPLIED POWERS

"[Sections 113.018-113.030 reserved for expansion]

"SUBCHAPTER B. DUTIES OF TRUSTEE

"Section 113.031. STANDARD FOR TRUST MANAGEMENT AND
INVESTMENT

"Section 113.032. LOAN OF TRUST FUNDS TO TRUSTEE

"Section 113.033. PURCHASE OR SALE OF TRUST PROPERTY BY
TRUSTEE

"Section 113.034. SALES FROM ONE TRUST TO ANOTHER

"Section 113.035. PURCHASE OF TRUSTEE'S SECURITIES

"Section 113.036. BOND

"Section 113.037. POWER OF TRUSTOR TO ALTER TRUSTEE'S AUTHORITY
OR RESPONSIBILITIES

"[Sections 113.038-113.050 reserved for expansion]

"SUBCHAPTER C. RESIGNATION OR REMOVAL OF TRUSTEE, AND
AUTHORITY OF MULTIPLE AND SUCCESSOR TRUSTEES

"Section 113.051. RESIGNATION OF TRUSTEE

"Section 113.052. REMOVAL OF TRUSTEE

"Section 113.053. APPOINTMENT OF SUCCESSOR TRUSTEE

"Section 113.054. POWERS AND DUTIES OF SUCCESSOR TRUSTEE

"Section 113.055. POWERS ATTACH TO OFFICE

"Section 113.056. EXERCISE OF POWERS BY MULTIPLE TRUSTEES

"[Sections 113.057-113.070 reserved for expansion]

"SUBCHAPTER D. ALLOCATION OF PRINCIPAL AND INCOME

"Section 113.071. RIGHT TO DETERMINE PRINCIPAL AND INCOME

"Section 113.072. PRINCIPAL AND INCOME

"Section 113.073. APPORTIONMENT OF INCOME ON TERMINATION OF
AN INTEREST

"Section 113.074. CORPORATE DISTRIBUTIONS

"Section 113.075. BOND PREMIUM AND DISCOUNT

"Section 113.076. PRINCIPAL USED IN BUSINESS

"Section 113.077. ANIMALS

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"Section 113.078. NATURAL RESOURCES

"Section 113.079. PROPERTY OTHER THAN NATURAL RESOURCES SUBJECT
TO DEPLETION

"Section 113.080. UNPRODUCTIVE PROPERTY

"Section 113.081. CHARGES AGAINST INCOME AND PRINCIPAL

"[Sections 113.082-113.100 reserved for expansion]

"SUBCHAPTER E. COMMON TRUST FUNDS

"Section 113.101. SHORT TITLE

"Section 113.102. COMMON TRUST FUNDS

"Section 113.103. AFFILIATED INSTITUTIONS

"Section 113.104. ACCOUNTING

"CHAPTER 113. ADMINISTRATION

"SUBCHAPTER A. POWERS OF TRUSTEE

"Section 113.001. LIMITATION OF POWERS. A power given to a trustee by this subchapter does not apply to a trust to the extent that the instrument creating the trust or a subsequent court order conflicts with or limits the power. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.002. GENERAL POWERS. A trustee may do anything in relation to the trust that is necessary, desirable, or advisable to carry out the trustee's powers under this subchapter or incident to the purposes of the trust, including:

"(1) execute and deliver a deed or other instrument; or

"(2) transfer, lease, encumber, or contract in regard to the joint exploration and development of the trust property, with other properties, and otherwise contract with reference to minerals or natural resources and to mineral rights and royalties on terms and conditions that the trustee considers are in the best interest of the trust estate. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.003. REAL PROPERTY MANAGEMENT. A trustee may:

"(1) exchange, subdivide, develop, improve, or partition real property;

"(2) make or vacate public plats;

"(3) adjust boundaries;

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"(4) adjust differences in valuation by giving or receiving value;

"(5) dedicate real property to public use or, if the trustee considers it in the best interest of the trust, dedicate easements to public use without consideration;

"(6) raze existing walls or buildings;

"(7) erect new party walls or buildings alone or jointly with an owner of adjacent property;

"(8) make ordinary repairs; and

"(9) make extraordinary alterations or additions in structures as necessary to make property more productive. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.004. SALE OF PROPERTY. (a) A trustee may sell or grant an option to sell real or personal property at public auction or private sale. A sale on credit must be secured by a lien on the property sold or on other property.

"(b) If a trustee is authorized to sell or dispose of real property, the trustee may sell or dispose of:

"(1) part of the property, whether the division is horizontal, vertical, or otherwise; or

"(2) an undivided interest. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.005. REAL PROPERTY LEASES. (a) A trustee may grant or take a lease of real property for any term, with or without options to purchase and with or without covenants relating to erection of buildings or renewals, including the lease of a right or privilege above or below the surface of the property, such as for exploration and removal of oil, gas, and other minerals.

"(b) A trustee may execute a lease containing terms or options that extend beyond the duration of the trust. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.006. INSURANCE. A trustee may purchase insurance of any nature, form, or amount. (V.A.C.S. Art. 7425b-25 (part).)

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"Section 113.007. CLAIMS. A trustee may compromise, contest, arbitrate, or settle claims of or against the trust estate or the trustee. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.008. WORTHLESS PROPERTY. A trustee may abandon property the trustee considers burdensome or worthless. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.009. MANAGEMENT OF SECURITIES. (a) A trustee may exercise the authority of an absolute owner over securities held in trust, including the authority to:

"(1) pay calls, assessments, or other charges against or because of securities if the payment is legally enforceable against the trustee or the trust property or if the trustee considers payment expedient and in the best interest of the trust;

"(2) sell or exercise stock subscription or conversion rights;

"(3) participate in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements, or voting trusts;

"(4) assent to corporate sales, leases, and encumbrances; and

"(5) vote corporate stock by proxy, without power of substitution, in favor of one or more persons or the survivor.

"(b) A trustee may deposit securities with a committee, for protection or otherwise, formed by or at the instance of persons holding similar securities, on terms and conditions approved by the trustee.

"(c) Securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights are free from restrictions on sale or otherwise relating to the original securities in the trust instrument. (V.A.C.S. Arts. 7425b-15 (part), 7425b-25 (part).)

"Section 113.010. STOCK OR OTHER PROPERTY HELD IN THE NAME OF A NOMINEE. A trustee may hold stock or other property in the name of a nominee without mentioning the trust in the stock

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certificate, stock registration book, or other evidence of title to the property, if:

"(1) the trust's records and the trustee's reports or accounts clearly show the trustee's ownership of the stock or other property and the facts regarding the holding;

"(2) the nominee deposits with the trustee a signed statement showing the trust ownership and endorses the stock certificate in blank, executes an appropriate stock power in blank and attaches it to the statement, or executes a conveyance or assignment of the title to the other property; and

"(3) the nominee does not have possession of or access to the stock certificate or other property except under the immediate supervision of the trustee. (V.A.C.S. Art. 7425b-16 (part).)

"Section 113.011. PAYMENT OF TAXES. A trustee may pay taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing authorities. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.012. EMPLOYMENT OF AGENTS. A trustee may employ attorneys, accountants, agents, and brokers reasonably necessary in the administration of the trust estate. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.013. PROVISION FOR SURVIVING SPOUSE OR MINOR CHILD; FUNERAL EXPENSES. (a) A trustee may permit a surviving spouse or minor child of the trustor to occupy real estate held in trust.

"(b) If reasonably necessary for the maintenance of the surviving spouse or minor child, the trustee may invest trust funds in real property to be used as a home by such a beneficiary and, in the trustee's discretion, pay the funeral expenses of a beneficiary actually receiving benefits from the trust estate at the time of the beneficiary's death. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.014. AUTHORITY TO BORROW. If a trustee may spend or use trust capital for any purpose or in any manner, the trustee may raise the required money by selling, converting,

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calling in, or encumbering all or part of the trust property for the time being in possession. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.015. ANCILLARY TRUSTEE. (a) If trust property is situated outside this state, a Texas trustee may name an individual or corporation qualified to act in the foreign jurisdiction in connection with trust property as ancillary trustee.

"(b) Within the limits of the authority of the Texas trustee, the ancillary trustee has the rights, powers, discretions, and duties the Texas trustee delegates, subject to the limitations and directions of the Texas trustee specified in the instrument evidencing the appointment of the ancillary trustee.

"(c) The Texas trustee may remove an ancillary trustee and appoint a successor at any time as to all or part of the trust assets.

"(d) The Texas trustee may require security of the ancillary trustee, who is answerable to the Texas trustee for all trust property entrusted to or received by the ancillary trustee in connection with the administration of the trust.

"(e) If the law of the foreign jurisdiction requires a certain procedure or a judicial order for the appointment of an ancillary trustee or to authorize an ancillary trustee to act, the Texas trustee and the ancillary trustee must satisfy the requirements. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.016. DEPOSITS BY CORPORATE TRUSTEE WITH ITSELF.

(a) A corporate trustee may deposit with itself trust funds that are being held pending investment, distribution, or payment of debts if, except as provided by Subsection (e):

"(1) it maintains as security for the deposit a separate fund of securities legal for trust investments;

"(2) the total market value of the security is at all times at least equal to the amount of the deposit; and

"(3) the separate fund is marked as such.

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"(b) If the trustee has a trust department separate from its banking department, the trust department shall maintain control of the securities fund.

"(c) The trustee may make periodic withdrawals from or additions to the securities fund as long as the required value is maintained.

"(d) Income from securities in the fund belongs to the trustee.

"(e) Security for a deposit under this section is not required to the extent the deposit is insured or otherwise secured under state or federal law. (V.A.C.S. Art. 7425b-11.)

"Section 113.017. IMPLIED POWERS. The powers, duties, and responsibilities under this subtitle do not exclude other implied powers, duties, or responsibilities that are not inconsistent with this subtitle. (V.A.C.S. Art. 7425b-25 (part).)

"[Sections 113.018-113.030 reserved for expansion]

"SUBCHAPTER B. DUTIES OF TRUSTEE

"Section 113.031. STANDARD FOR TRUST MANAGEMENT AND INVESTMENT. (a) In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing trust property, a trustee shall exercise the judgment and care under the current circumstances that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income from, as well as the safety of, their capital.

"(b) Within the limitations of Subsection (a), a trustee may acquire and retain every kind of property and every kind of investment, including bonds, debentures, and other corporate obligations, preferred or common stock, and interests in investment trusts and mutual funds, that persons of ordinary prudence, discretion, and intelligence acquire or retain for their own account.

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"(c) A trustee may indefinitely retain property acquired under this section without regard to its suitability for original purchase.

"(d) Unless defined differently in the trust instrument or a court order relating to the trust, 'legal investment,' 'authorized investment,' or similar terms in the trust instrument or court order mean an investment that is permitted under this section.

"(e) If the terms of the instrument creating or defining the trust or a court order relating to the trust conflict with this section, the trust instrument or court order controls. (V.A.C.S. Art. 7425b-46 (part).)

"Section 113.032. LOAN OF TRUST FUNDS TO TRUSTEE. (a) Except as provided by Subsection (b), a trustee may not lend trust funds to:

- "(1) the trustee or an affiliate;
- "(2) a director, officer, or employee of the trustee or an affiliate;
- "(3) a relative of the trustee; or
- "(4) the trustee's employer, partner, or other business associate

"(b) This section does not prohibit:

- "(1) a loan by a trustee to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust; or
- "(2) a deposit by a corporate trustee with itself under Section 113.016. (V.A.C.S. Art. 7425b-10.)

"Section 113.033. PURCHASE OR SALE OF TRUST PROPERTY BY TRUSTEE. (a) Except as provided by Subsections (b) and (c), a trustee may not directly or indirectly buy or sell trust property from or to:

- "(1) the trustee or an affiliate;
- "(2) a director, officer, or employee of the trustee or an affiliate;
- "(3) a relative of the trustee; or

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"(4) the trustee's employer, partner, or other business associate.

"(b) A national banking association or a state-chartered corporation with the right to exercise trust powers that is serving as executor, administrator, guardian, trustee, or receiver may sell shares of its own capital stock held by it for an estate to one or more of its officers or directors if a court of competent jurisdiction:

"(1) finds that the sale is in the best interest of the estate that owns the shares;

"(2) fixes or approves the sales price of the shares and the other terms of the sale; and

"(3) enters an order authorizing and directing the sale.

"() If a corporate trustee, executor, administrator, or guardian is legally authorized to retain its own capital stock in trust, the trustee may exercise rights to purchase its own stock if increases in the stock are offered pro rata to shareholders.

"(d) If the exercise of rights or the receipt of a stock dividend results in a fractional shareholding and the acquisition meets the investment standard required by this subchapter, the trustee may purchase additional fractional shares to round out the holding to a full share. (V.A.C.S. Art. 7425b-12.)

"Section 113.034. SALES FROM ONE TRUST TO ANOTHER. A trustee of one trust may not sell property to another trust of which it is also trustee unless the property is:

"(1) a bond, note, bill, or other obligation issued or fully guaranteed as to principal and interest by the United States; and

"(2) sold for its current market price. (V.A.C.S. Art. 7425b-13.)

"Section 113.035. PURCHASE OF TRUSTEE'S SECURITIES. (a) Except as provided by Subsection (b), a trustee may not purchase for the trust the stock, bonds, obligations, or other securities of:

"(1) the trustee or an affiliate, if the trustee is a corporation; or

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"(2) a corporation with which the trustee is connected as director, owner, manager, or any other executive or official capacity, if the trustee is not a corporation.

"(b) A trustee may:

"(1) retain stock already owned by the trust if the retention satisfies Section 113.031; and

"(2) exercise stock rights or purchase fractional shares under Section 113.033. (V.A.C.S. Art. 7425b-14.)

"Section 113.036. BOND. (a) A corporate trustee legally authorized to act as a trustee is not required to provide a bond to secure performance of its duties as trustee.

"(b) Unless the instrument creating the trust provides otherwise, a noncorporate trustee of a trust created on or after April 11, 1945, must give bond:

"(1) payable to each person interested in the trust, as their interests may appear; and

"(2) conditioned on the faithful performance of the trustee's duties.

"(c) The bond must be in an amount and with the sureties required by order of a court in a proceeding brought for this determination.

"(d) Any person interested in the trust may bring an action in district court to increase or decrease the amount of a bond or to substitute or add sureties.

"(e) The trustee shall deposit the bond with the clerk of the court that issued the order requiring the bond. A suit on the bond may be maintained on a certified copy. Appropriate proof of a recovery on a bond reduces the liability of the sureties pro tanto. (V.A.C.S. Art. 7425b-25 (part).)

"Section 113.037. POWER OF TRUSTOR TO ALTER TRUSTEE'S AUTHORITY OR RESPONSIBILITIES. (a) Except as provided by Subsection (b), the trustor may:

"(1) relieve the trustee from a duty, liability, or restriction imposed by this subtitle;

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"(2) alter or deny a privilege or power granted to the trustee by this subtitle; or

"(3) add a duty, restriction, liability, privilege, or power to those in this subtitle.

"(b) A trustor may not relieve a corporate trustee from the duties, restrictions, or liabilities of Section 113.016, 113.032, or 113.033.

"(c) The trustor may exercise any of the powers under Subsection (a) by a provision of the original instrument creating the trust or by an amendment, if the trustor retained the authority to amend the trust. (V.A.C.S. Art. 7425b-22.)

"[Sections 113.038-113.050 reserved for expansion]

**"SUBCHAPTER C. RESIGNATION OR REMOVAL OF TRUSTEE, AND AUTHORITY
OF MULTIPLE AND SUCCESSOR TRUSTEES**

"Section 113.051. RESIGNATION OF TRUSTEE. (a) A trustee may petition a court for permission to resign as trustee.

"(b) The court may accept a trustee's resignation and discharge the trustee from the trust on the terms and conditions necessary to protect the rights of the other persons interested in the trust. (V.A.C.S. Art. 7425b-38.)

"Section 113.052. REMOVAL OF TRUSTEE. (a) On the petition of a person actually interested in a trust and after hearing, a court may remove a trustee and deny part or all of the trustee's compensation if:

"(1) the trustee materially violated or attempted to violate the terms of the trust, resulting in an actual financial loss to the trust;

"(2) the trustee becomes incompetent or insolvent;

"(3) there is reasonable doubt concerning the solvency of the trustee or the sureties; or

"(4) for other cause.

"(b) A beneficiary, cotrustee, or successor trustee may treat a violation resulting in removal as a breach of trust.

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"(c) A court that removes a trustee may appoint a new trustee to fill the vacancy. (V.A.C.S. Art. 7425b-39.)

"Section 113.053. APPOINTMENT OF SUCCESSOR TRUSTEE. Unless the trust instrument provides for the appointment of a successor trustee, on the death of a sole or surviving trustee and the petition of a person interested in the trust estate, a court shall appoint a successor trustee in whom the trust will vest. (V.A.C.S. Art. 7425b-37.)

"Section 113.054. POWERS AND DUTIES OF SUCCESSOR TRUSTEE. (a) Unless otherwise ordered by the court appointing a successor trustee, the successor trustee has the rights, powers, authority, discretion, and title to trust property conferred by the trust instrument and by statute.

"(b) The successor trustee has the duties, responsibilities, and liabilities imposed by the trust instrument and by statute. (V.A.C.S. Art. 7425b-40.)

"Section 113.055. POWERS ATTACH TO OFFICE. Except as otherwise provided by the original or amended trust instrument, by a court order, or by this subtitle, the powers of a trustee are inherent in the office and are not personal. (V.A.C.S. Art. 7425b-17.)

"Section 113.056. EXERCISE OF POWERS BY MULTIPLE TRUSTEES. Except as otherwise provided by the original or amended trust instrument or by court order:

"(1) a power vested in three or more trustees may be exercised by a majority of the trustees; and

"(2) if two or more trustees are appointed by a will or a voluntary trust and one or more of the trustees die, the survivor or survivors may administer the trust and exercise the discretionary powers given to the trustees jointly. (V.A.C.S. Art. 7425b-18 (part).)

"[Sections 113.057-113.070 reserved for expansion]

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"SUBCHAPTER D. ALLOCATION OF PRINCIPAL AND INCOME

"Section 113.071. RIGHT TO DETERMINE PRINCIPAL AND INCOME.

(a) A trustor may direct or grant discretion to a trustee or other person to direct the manner in which a trust is administered in regard to the allocation of receipts and expenditures as credits or charges to income or principal.

"(b) Except as provided by a trustor, this subtitle governs the ascertainment of trust income and principal and the apportionment of receipts and income between the interests of an income beneficiary and a remainderman. (V.A.C.S. Art. 7425b-26.)

"Section 113.072. PRINCIPAL AND INCOME. (a) Principal is property set aside or limited by the owner or other legally authorized person to be held in trust until it is delivered to a remainderman, including:

"(1) the proceeds of a sale or other transfer of principal, except a lease, or the proceeds of the grant of an option for the sale or transfer of principal;

"(2) the repayment of a loan;

"(3) the proceeds of a liquidation of corporate assets;

"(4) the proceeds from property taken in an eminent domain proceeding, if separate awards to the income beneficiary and remainderman are not made;

"(5) the proceeds of insurance on property that is part of the principal, unless the insurance was issued for the benefit of either an income beneficiary or remainderman alone; and

"(6) a refund, replacement, or change in the form of the principal.

"(b) Income is the return derived from the use of principal, including:

"(1) rent on real or personal property;

"(2) dividends payable other than in shares of the distributing corporation; and

"(3) interest on money lent, interest on or the rental or use value of property wrongfully withheld or tortiously damaged, or

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money or property otherwise paid in return for the use of principal.

"(c) Unless the terms of the transaction establishing the principal require that income be accumulated, the income remaining after the deduction of expenses charged against income, including reasonable reserves, shall be paid to or retained by the income beneficiary. Principal shall be held for ultimate distribution according to law or the terms of the transaction establishing the principal. A profit or loss that results from a change of form of principal shall be credited to or charged against principal. (V.A.C.S. Arts. 7425b-4 (part), 7425b-27.)

"Section 113.073. APPORTIONMENT OF INCOME ON TERMINATION OF AN INTEREST. (a) If the right of an income beneficiary to periodic income, other than dividends, terminates between payment dates for any reason, the income beneficiary or the personal representative of the income beneficiary is entitled to the portion of the net income next payable equal to the proportion of the time during which the income would normally accrue, including the date the right terminates, and during which the beneficiary had a right to the income. The person named in the transaction establishing the principal as the next person to receive income is entitled to the remaining income from the period.

"(b) If the right of the first income beneficiary to periodic income accrues on a day other than the payment date, the income beneficiary is entitled to the portion of the income equal to the proportion of the time during the total period the income would normally accrue that the income beneficiary was entitled to the income. The remaining income from the period shall be added to the principal.

"(c) Neither the trustee nor an income beneficiary may bring an action to recover apportioned income until after the date it would have been due but for the termination of the income beneficiary's interest.

"(d) This section applies even though a specific remainderman is not named. (V.A.C.S. Art. 7425b-28.)

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§ 113.074

"Section 113.074. CORPORATE DISTRIBUTIONS. (a) Except as provided by Subsections (b) and (c), all corporate distributions are income, including:

"(1) cash dividends;

"(2) distributions of or rights to subscribe to shares, securities, or obligations of a corporation other than the distributing corporation;

"(3) the proceeds from the disposition of a right or property that is income under this subsection; and

"(4) the distribution chosen under an option given by the distributing corporation to receive the distribution either in cash or in its own shares.

"(b) Except for the portion of a corporate distribution the corporation indicates is a settlement of preferred or guaranteed dividends accrued since the trustee became a shareholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

"(1) a call of shares;

"(2) a merger, consolidation, reorganization, or other plan by which assets of the distributing corporation are acquired by another corporation; or

"(3) a total or partial liquidation of the corporation, including a distribution of assets, other than cash, under a court decree or a final administrative order of a governmental agency.

"(c) Property is principal if it is:

"(1) a distribution of shares of the distributing corporation, including a distribution in the form of a stock split or stock dividend;

"(2) a right of stockholders because of their stock ownership to subscribe to shares or other securities issued by the distributing corporation, or the proceeds of a sale of the right; or

"(3) any distribution except from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust,

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including a distribution from capital gains, depreciation, or depletion, regardless of whether the distribution is cash, an option to take new stock or cash, or an option to purchase additional shares.

"(d) For the purpose of determining the source or character of dividends or a distribution of corporate assets under this section, the trustee may rely on a statement of the distributing corporation as to any relevant fact.

"(e) This section applies only to trusts created on or after April 19, 1943. The intent of a testator or testatrix as expressed in a testamentary instrument prevails over this section. (V.A.C.S. Art. 7425b-29.)

"Section 113.075. BOND PREMIUM AND DISCOUNT. (a) Except as provided by Subsection (b), the proceeds of the sale or redemption of a bond or other obligation for the payment of money is principal.

"(b) If a security that does not bear interest was purchased at a discount, the discount received or recovered is income.

"(c) If the bond or other obligation is part of the principal at the time the principal is established, the bond or obligation is deemed to have its inventory value, or its market value if it has no inventory value, at the time the principal is established. If a bond or other obligation for the payment of money is purchased after the principal is established, the bond or obligation is deemed to have a value equal to its cost, regardless of its par or maturity value. (V.A.C.S. Art. 7425b-30.)

"Section 113.076. PRINCIPAL USED IN BUSINESS. (a) If a trustee or income beneficiary uses part of the principal to continue a business carried on by the original owner of the property comprising the principal, the net profit of the business is income, but a loss during an annual accounting period is chargeable against principal.

"(b) For the purposes of this section:

"(1) if the business is buying and selling property at wholesale or retail, net profit for a period is the sum of the

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§ 113.076

gross returns during the period and the value of the inventory at the end of the period, less the sum of the expenses and purchases during the period and the value of the inventory at the beginning of the period; and

"(2) if the business does not consist of buying and selling property, net profit for a period is the amount computed according to the customary practice of the business, as long as the method does not decrease the principal.

"(c) An increase in the value of principal used in the business is principal. (V.A.C.S. Art. 7425b-31.)

"Section 113.077. ANIMALS. (a) Increase of principal consisting of animals is allocated according to this section.

"(b) If the animals are employed in business, Section 113.076 applies.

"(c) If the animals are held partly or solely because of the offspring they are expected to produce, the offspring are principal to the extent necessary to maintain the original number of animals and the remainder are income.

"(d) In all instances not covered by Subsection (b) or (c), the animals' offspring are income. (V.A.C.S. Art. 7425b-32.)

"Section 113.078. NATURAL RESOURCES. (a) If part of the principal consists of an interest in real property, including a royalty, overriding royalty, or working interest, and the trustee or income beneficiary may sell, lease, or otherwise develop the timber, minerals, or other natural resources in, on, or under the property, and the trust instrument does not provide for disposition of the proceeds, the proceeds are allocated to principal and income in accordance with this section.

"(b) If the proceeds are received as delay rentals on a lease, the proceeds are income.

"(c) If the proceeds are received as consideration connected with the physical severance of the natural resources:

"(1) 27-1/2 percent of the gross proceeds or 50 percent of the net proceeds, after deducting the expenses and carrying charges on the property, whichever is greater, is principal; and

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"(2) the balance of the proceeds is income.

"(d) This section applies whether or not the property is producing at the time the trust takes effect. (V.A.C.S. Art. 7425b-33.)

"Section 113.079. PROPERTY OTHER THAN NATURAL RESOURCES SUBJECT TO DEPLETION. (a) If part of the principal consists of property other than natural resources that is depletable, such as a leasehold, patent, copyright, or royalty, the return from the property is:

"(1) entirely income if the trustee or income beneficiary in possession is not required to change the form of the investment; or

"(2) income up to five percent a year of the value of the property, and the remainder is principal, if the trustee or income beneficiary in possession is required to change the form of the investment.

"(b) For the purposes of this section, the 'value' of property is:

"(1) its fair inventory value;

"(2) its market value, if the property is part of the original principal and does not have a fair inventory value; or

"(3) its cost, if the property is purchased after the principal is established and does not have a fair inventory value. (V.A.C.S. Art. 7425b-34.)

"Section 113.080. UNPRODUCTIVE PROPERTY. (a) Except as provided by Subsection (b), if part of the principal consists of any type of property that has been unproductive for more than one year and that the trustee is required to change as soon as possible without sacrifice of value, and if the change is delayed but is made before the principal is finally distributed, to the extent that the net proceeds from the sale exceed the value of the property, the income beneficiary or the beneficiary's estate is entitled to a share of the net proceeds. The beneficiary's share is an amount equal to:

"(1) the difference between the net proceeds and the amount which, if invested at four percent a year simple interest during

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the time the change was delayed, would have produced the net proceeds, less

"(2) . income received by the income beneficiary from the property or the value of the income beneficiary's use of the property during the period the change was delayed.

"(b) Property is unproductive if it does not produce an average annual net income, without considering depreciation or obsolescence, equal to at least one percent of its value.

"(c) A change of an investment is delayed from the time a duty to make the change first arises, which is presumed in the absence of evidence to the contrary to be one year after the property becomes unproductive or one year after the trustee receives the property if it was unproductive at the time of receipt.

"(d) If there are successive income beneficiaries, the delayed income shall be divided among them according to the time each was entitled to income.

"(e) This section does not require a trustee to change the form of an investment, but if the trustee is otherwise required to change an investment, the trustee shall use reasonable care in determining the necessity for, and the time and manner of, the change.

"(f) For the purposes of this section:

"(1) the 'value' of property is:

"(A) fair inventory value;

"(B) if the property is part of the original principal and does not have a fair inventory value, market value;

"(C) if the property is purchased after the principal is established and does not have a fair inventory value, its cost; or

"(D) if the property is acquired through foreclosure of a mortgage held by the trust, the net investment in the property up to the date of resale by the trust and not the bid price at the foreclosure sale;

"(2) 'net proceeds' is the total amount received for the property less the sum of the expenses incurred in disposing of it

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and all carrying charges that were charged to principal while it was unproductive; and

"(3) 'net investment' is all money invested and advanced.
(V.A.C.S. Art. 7425b-35.)

"Section 113.081. CHARGES AGAINST INCOME AND PRINCIPAL. (a)
Except as otherwise provided by Subsection (c), the ordinary expenses connected with the trust estate or its administration and management are chargeable against income, including:

"(1) regularly recurring taxes assessed against principal;

"(2) water rates;

"(3) premiums for insurance on the estates of both income beneficiary and remainderman;

"(4) interest on a mortgage on principal;

"(5) ordinary repairs; and

"(6) compensation of assistants, fees, and court costs on regular accountings.

"(b) All expenses that are not chargeable against income are chargeable against principal, including:

"(1) the cost of investing or reinvesting principal;

"(2) attorney's fees and other costs incurred in maintaining or defending an action to protect the trust or the trust's property, unless the action is due to the fault of or is caused by the income beneficiary;

"(3) the cost of or assessments for improvements to property comprising principal; and

"(4) taxes levied by any federal, state, or foreign authority on profit or gain classified by this subtitle as principal, regardless of whether or not the tax is called an income tax.

"(c) A trustee may charge attorney's fees and the trustee's commissions or compensation against income or principal, or partly against either, as in the trustee's discretion is equitable.

"(d) A trustee shall apportion a regularly recurring expense chargeable to income on a daily basis if the right of an income

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beneficiary ends on a date other than the payment date of the expense. If an expense is unusually large, the trustee may distribute it through part or all of the year or through a series of years. If the right of the income beneficiary ends during the period through which the expense was distributed, the trustee shall apportion the expense between the income beneficiary and the remainderman on the basis of the distribution.

"(e) If the cost of or special taxes or assessments for an improvement that increases the value of property held as principal are paid out of principal, the trustee shall annually reserve from income and add to principal an amount equal to the cost of the improvement divided by the number of years the improvement is reasonably expected to last. (V.A.C.S. Art. 7425b-36.)

"[Sections 113.082-113.100 reserved for expansion]

"SUBCHAPTER E. COMMON TRUST FUNDS

"Section 113.101. **SHORT TITLE.** This subchapter may be cited as the Uniform Common Trust Fund Act. (V.A.C.S. Art. 7425b-48, Sec. 4.)

"Section 113.102. **COMMON TRUST FUNDS.** (a) A bank or trust company qualified to act as a fiduciary in this state may establish common trust funds to provide investments to itself as a fiduciary, including as a custodian under the Texas Uniform Gifts to Minors Act (Chapter 141), or to itself and others, as cofiduciaries.

"(b) The fiduciary or cofiduciary may place investment funds in interests in common trust funds if:

"(1) the investment is not prohibited by the instrument or order creating the fiduciary relationship; and

"(2) if there are cofiduciaries, the cofiduciaries consent to the investment.

"(c) A common trust fund includes a fund:

"(1) qualified for exemption from federal income taxation as a common trust fund and maintained exclusively for eligible fiduciary accounts; and

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"(2) consisting solely of assets of retirement, pension, profit-sharing, stock bonus, or other employees' trusts that are exempt from federal income taxation. (V.A.C.S. Art. 7425b-48, Secs. 1(a) (part), (b).)

"Section 113.103. AFFILIATED INSTITUTIONS. A bank or trust company that is a member of an affiliated group under Section 1504, Internal Revenue Code of 1954 (26 U.S.C. 1504), with a bank or trust company maintaining common trust funds may participate in one or more of the funds. (V.A.C.S. Art. 7425b-48, Sec. 1(a) (part).)

"Section 113.104. ACCOUNTING. A bank or trust company operating common trust funds may by application to the district court obtain approval of an accounting on the conditions established by the court. The bank or trust company is not required to make a court accounting regarding the funds unless ordered to do so by a court. (V.A.C.S. Art. 7425b-48, Sec. 2.)

"CHAPTER 114. LIABILITIES, RIGHTS, AND REMEDIES OF
TRUSTEES, BENEFICIARIES, AND THIRD PERSONS

"SUBCHAPTER A. LIABILITY OF TRUSTEE

"Section 114.001. TORT LIABILITY

"Section 114.002. PERSON OTHER THAN TRUSTEE IN CONTROL

"Section 114.003. ACTIONS TAKEN PRIOR TO KNOWLEDGE OR
NOTICE OF FACTS

"Section 114.004. RELEASE OF LIABILITY BY BENEFICIARY

"Section 114.005. VOTING STOCK

"Section 114.006. HOLDINGS BY A NOMINEE

"Section 114.007. POWER EXERCISED BY MAJORITY

"[Sections 114.008-114.020 reserved for expansion]

"SUBCHAPTER B. RIGHTS OF TRUSTEE

"Section 114.021. EXONERATION OR REIMBURSEMENT FOR TORT

"Section 114.022. GENERAL RIGHT TO REIMBURSEMENT

"[Sections 114.023-114.040 reserved for expansion]

"SUBCHAPTER C. THIRD PERSONS

"Section 114.041. PAYMENT OF MONEY TO TRUSTEE

"Section 114.042. CONVEYANCE BY TRUSTEE

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"Section 114.043. TORT LIABILITY OF TRUST ESTATE

"Section 114.044. CONTRACTS OF TRUSTEE

"Section 114.045. PARTNERSHIPS

"Section 114.046. FAILURE TO PROVIDE BOND

"CHAPTER 114. LIABILITIES, RIGHTS, AND REMEDIES OF
TRUSTEES, BENEFICIARIES, AND THIRD PERSONS

"SUBCHAPTER A. LIABILITY OF TRUSTEE

"Section 114.001. TORT LIABILITY. A trustee may be held personally liable for a tort committed by him or by his agents or employees in the course of their employment, subject to the trustee's right of exoneration or reimbursement provided by Section 114.021. (V.A.C.S. Art. 7425b-21 (part).)

"Section 114.002. PERSON OTHER THAN TRUSTEE IN CONTROL. (a) If a trust instrument reserves or vests authority in any person to the exclusion of the trustee, including the trustor, an advisory or investment committee, or one or more cotrustees, to direct the making or retention of an investment or to perform any other act in the management or administration of the trust, the excluded trustee or cotrustee is not liable for a loss resulting from the exercise of the authority in regard to the investments, management, or administration of the trust.

"(b) Subsection (a) does not apply if the trust instrument contains contrary provisions regarding the liability of an excluded trustee or cotrustee. (V.A.C.S. Art. 7425b-25 (part).)

"Section 114.003. ACTIONS TAKEN PRIOR TO KNOWLEDGE OR NOTICE OF FACTS. A trustee is not liable for a mistake of fact made before the trustee has actual knowledge or receives written notice of the happening of any event that determines or affects the distribution of the income or principal of the trust estate, including marriage, divorce, attainment of a certain age, performance of education requirements, or death. (V.A.C.S. Art. 7425b-25 (part).)

"Section 114.004. RELEASE OF LIABILITY BY BENEFICIARY. (a) Except as provided by Subsection (b), a beneficiary who has full

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legal capacity and is acting on full information may relieve a trustee from any duty, responsibility, restriction, or liability as to the beneficiary that would otherwise be imposed on the trustee by this subtitle, including liability for past violations.

"(b) A beneficiary may not release the trustee from liability for a violation of Section 113.016, 113.032, or 113.033.

"(c) The release must be in writing and delivered to the trustee. (V.A.C.S. Art. 7425b-23.)

"Section 114.005. VOTING STOCK. Unless there is bad faith or gross negligence by a trustee of a trust owning corporate stock in selecting a person to whom a limited or unlimited proxy is given, the trustee is not liable for a financial loss to the trust estate or to beneficiaries of the trust resulting from deciding how to vote or in the voting of the stock. (V.A.C.S. Art. 7425b-15 (part).)

"Section 114.006. HOLDINGS BY A NOMINEE. A trustee who holds securities or property in the name of a nominee is not relieved of liability for a loss to the trust resulting from an improper act of the nominee in connection with the holding. (V.A.C.S. Art. 7425b-16 (part).)

"Section 114.007. POWER EXERCISED BY MAJORITY. (a) A trustee who does not join in exercising a power held by three or more cotrustees is not liable to a beneficiary of the trust or to others for the consequences of the exercise, nor is a dissenting trustee liable for the consequences of an act in which the trustee joins at the direction of the majority trustees if the trustee expressed the dissent in writing to any of the cotrustees at or before the time of joinder.

"(b) This section does not excuse a cotrustee from liability for the cotrustee's failure to perform a duty as trustee. (V.A.C.S. Art. 7425b-18 (part).)

"[Sections 114.008-114.020 reserved for expansion]

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"SUBCHAPTER B. RIGHTS OF TRUSTEE

"Section 114.021. EXONERATION OR REIMBURSEMENT FOR TORT.

(a) Except as provided in Subsection (b), a trustee who incurs personal liability for a tort committed in the administration of the trust is entitled to exoneration from the trust property if the trustee has not paid the claim or to reimbursement from the trust property if the trustee has paid the claim, if:

"(1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;

"(2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence in incurring the liability; or

"(3) the tort increased the value of the trust property.

"(b) A trustee who is entitled to exoneration or reimbursement under Subdivision (3) of Subsection (a) is entitled to exoneration or reimbursement only to the extent of the increase in the value of the trust property. (V.A.C.S. Art. 7425b-20.)

"Section 114.022. GENERAL RIGHT TO REIMBURSEMENT. (a) A trustee may discharge or reimburse himself, with interest, from trust principal or income, or partly from both, for:

"(1) advances made for the convenience, benefit, or protection of the trust or its property; and

"(2) expenses, losses, and liabilities, except those resulting from the negligence of the trustee, incurred while administering or protecting the trust or because of the trustee holding or owning any of the trust property.

"(b) The trustee has a lien against trust property to secure reimbursement under Subsection (a). (V.A.C.S. Art. 7425b-25 (part).)

"[Sections 114.023-114.040 reserved for expansion]

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"SUBCHAPTER C. THIRD PERSONS

"Section 114.041. PAYMENT OF MONEY TO TRUSTEE. (a) A person who actually and in good faith pays to a trustee money that the trustee is authorized to receive is not responsible for the proper application of the money according to the trust.

"(b) A right or title derived from the trustee in consideration of the monetary payment under Subsection (a) may not be impeached or questioned because of the trustee's misapplication of the money. (V.A.C.S. Art. 7425b-9.)

"Section 114.042. CONVEYANCE BY TRUSTEE. (a) If property is conveyed or transferred to a trustee in trust but the conveyance or transfer does not identify the trust or disclose the names of the beneficiaries, the trustee may convey, transfer, or encumber the title of the property without subsequent question by a person who claims to be a beneficiary under the trust or who claims by, through, or under an undisclosed beneficiary.

"(b) Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee. (V.A.C.S. Art. 7425b-8.)

"Section 114.043. TORT LIABILITY OF TRUST ESTATE. (a) A personal liability of a trustee or a predecessor trustee for a tort committed in the course of the administration of the trust may be collected from the trust property if the trustee is sued in a representative capacity and the court finds that:

"(1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;

"(2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence in incurring the liability; or

"(3) the tort increased the value of the trust property.

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"(b) A trust that is liable for the trustee's tort under Subdivision (3) of Subsection (a) of this section is liable only to the extent of the permanent increase in value of the trust property.

"(c) A plaintiff in an action against the trustee as the representative of the trust does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim. (V.A.C.S. Art. 7425b-21 (part).)

"Section 114.044. CONTRACTS OF TRUSTEE. (a) If a trustee or a predecessor trustee makes a contract that is within his power as trustee and a cause of action arises on the contract, the plaintiff may sue the trustee in his representative capacity, and a judgment rendered in favor of the plaintiff is collectible by execution against the trust property. The plaintiff may sue the trustee individually if the trustee made the contract and the contract does not exclude the trustee's personal liability.

"(b) The addition of 'trustee' or 'as trustee' after the signature of a trustee who is party to a contract is prima facie evidence of an intent to exclude the trustee from personal liability.

"(c) In an action on a contract against a trustee in the trustee's representative capacity, the plaintiff does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim. (V.A.C.S. Art. 7425b-19 (part).)

"Section 114.045. PARTNERSHIPS. (a) To the extent allowed by law, a trustee who takes the place of a deceased partner in a general partnership in accordance with the articles of partnership is liable to third persons only to the extent of the:

"(1) deceased partner's capital in the partnership; and

"(2) trust funds held by the trustee.

"(b) A trustee who contracts to enter a general partnership in its capacity as trustee shall limit, to the extent allowed by law, the trust's liability to:

"(1) the trust assets contributed to the partnership; and

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"(2) other assets of the trust under the management of the contracting trustee.

"(c) If another provision of this subtitle conflicts with this section, this section controls. This section does not exonerate a trustee from liability for negligence. (V.A.C.S. Art. 7425b-19 (part).)

"Section 114.046. FAILURE TO PROVIDE BOND. The failure of a trustee to comply with the provisions of this subtitle concerning making and depositing a performance bond as security for persons interested in the trust does not make void or voidable or otherwise affect an act or transaction of the trustee with a third person. (V.A.C.S. Art. 7425b-25 (part).)

"CHAPTER 115. JURISDICTION, VENUE, AND PROCEEDINGS

"SUBCHAPTER A. JURISDICTION AND VENUE

"Section 115.001. JURISDICTION

"Section 115.002. VENUE

"[Sections 115.003-115.010 reserved for expansion]

"SUBCHAPTER B. PROCEEDINGS

"Section 115.011. PARTIES

"Section 115.012. RULES OF PROCEDURE

"Section 115.013. PROCEEDING CONCERNING PERFORMANCE BOND

"Section 115.014. NOTICE TO BENEFICIARIES OF PROCEEDING

"Section 115.015. INTERVENTION BY INTERESTED PARTIES

"CHAPTER 115. JURISDICTION, VENUE, AND PROCEEDINGS

"SUBCHAPTER A. JURISDICTION AND VENUE

"Section 115.001. JURISDICTION. A district court has original jurisdiction to:

"(1) construe a trust instrument;

"(2) determine the law applicable to a trust instrument;

"(3) determine the powers, responsibilities, duties, and liability of a trustee;

"(4) make determinations of fact affecting the administration of the trust estate;

"(5) require an accounting by a trustee;

"(6) surcharge a trustee; and

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"(7) for cause shown and after notice to the beneficiaries, relieve a trustee from all or part of the duties, limitations, or restrictions imposed on the trustee by this subtitle or to wholly or partly release and excuse a trustee who has acted honestly and reasonably from liability for violating this subtitle. (V.A.C.S. Art. 7425b-24 (part).)

"Section 115.002. VENUE. (a) The venue of an action under Section 115.001 is determined according to this section.

"(b) If there is a single, noncorporate trustee, venue is in the county in which the trustee's residence is located.

"(c) If there is a single, corporate trustee, venue is in the county in which the corporation's principal place of business is located.

"(d) If there are two or more trustees, venue is in the county in which the principal office of the trust is maintained. (V.A.C.S. Art. 7425b-24 (part).)

"[Sections 115.003-115.010 reserved for expansion]

"SUBCHAPTER B. PROCEEDINGS

"Section 115.011. PARTIES. (a) A person affected by or having an active interest in the administration of a trust estate may bring an action under Section 115.001.

"(b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001. The only necessary parties to such an action are:

"(1) a beneficiary on whose act or obligation the action is predicated;

"(2) a person designated by name in the instrument creating the trust; and

"(3) a person who is actually receiving distributions from the trust estate at the time the action is filed. (V.A.C.S. Art. 7425b-24 (part).)

"Section 115.012. RULES OF PROCEDURE. Except as otherwise provided, all actions instituted under this subtitle are governed by the Texas Rules of Civil Procedure and the other statutes and

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rules that are applicable to civil actions generally. (V.A.C.S. Art. 7425b-24 (part).)

"Section 115.013. PROCEEDING CONCERNING PERFORMANCE BOND.

(a) A proceeding to set and approve a trustee's performance bond brought by the trustee may be on ex parte verified petition that shows the nature and probable value of the trust estate, and citation is not necessary. The district court may, in term time or vacation, hear the application and enter the order the court considers proper.

"(b) If a proceeding to set and approve a trustee's performance bond is brought by some person interested in the trust other than the trustee, citation must be issued, as required by law, to the trustee unless the trustee waives the issuance of citation in writing. (V.A.C.S. Art. 7425b-25 (part).)

"Section 115.014. NOTICE TO BENEFICIARIES OF PROCEEDING.

(a) A court may not render judgment in favor of a plaintiff in an action on a contract executed by the trustee or in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration unless the plaintiff proves that before the 31st day after the date the action began, or within any other period fixed by the court that is more than 30 days before the date of the judgment, the plaintiff gave notice of the existence and nature of the action to:

"(1) each beneficiary known to the trustee who then had a present or contingent interest; or

"(2) in an action on a contract involving a charitable trust, the attorney general and any corporation that is a beneficiary or agency in the performance of the trust.

"(b) The plaintiff shall give the notice required by Subsection (a) by registered mail or by certified mail, return receipt requested, addressed to the party to be notified at the party's last known address. The trustee shall give the plaintiff a list of the beneficiaries or persons having an interest in the trust estate and their addresses, if known to the trustee, before

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the 11th day after the date the plaintiff makes a written request for the information.

"(c) The plaintiff satisfies the notice requirements of this section by notifying the persons on the list provided by the trustee. (V.A.C.S. Arts. 7425b-19 (part), 7425k-21 (part).)

"Section 115.015. INTERVENTION BY INTERESTED PARTIES. (a) A beneficiary of a trust may intervene and contest the right of the plaintiff to recover in an action on a contract executed by the trustee or in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration. If the beneficiary is a minor or has been adjudged incompetent, the court shall appoint a guardian ad litem who shall defend the action.

"(b) If an action is based on a contract executed by the trustee of a charitable trust, the attorney general and any corporation that is a beneficiary or agency in the performance of the trust may intervene and contest the right of the plaintiff to recover. (V.A.C.S. Arts. 7425b-19 (part), 7425b-21 (part).)

"[Chapters 116-120 reserved for expansion]

"SUBTITLE C. MISCELLANEOUS TRUSTS

"CHAPTER 121. EMPLOYEES' TRUSTS

"SUBCHAPTER A. PENSION TRUSTS

"Section 121.001. PENSION TRUSTS

"Section 121.002. EMPLOYEES OF CONTROLLED CORPORATIONS

"Section 121.003. APPLICATION OF TEXAS TRUST ACT

"Section 121.004. RULE AGAINST PERPETUITIES

"Section 121.005. ACCUMULATION OF INCOME

"[Sections 121.006-121.050 reserved for expansion]

"SUBCHAPTER B. DEATH BENEFITS UNDER EMPLOYEES' TRUSTS

"Section 121.051. DEFINITIONS

"Section 121.052. PAYMENT OF DEATH BENEFIT TO TRUSTEE

"Section 121.053. VALIDITY OF TRUST DECLARATION

"Section 121.054. UNCLAIMED BENEFITS

"Section 121.055. EXEMPTION FROM TAXES AND DEBTS

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"Section 121.056. COMMINGLING OF ASSETS

"Section 121.057. PRIOR DESIGNATIONS NOT AFFECTED

"Section 121.058. CONSTRUCTION

"SUBTITLE C. MISCELLANEOUS TRUSTS

"CHAPTER 121. EMPLOYEES' TRUSTS

"SUBCHAPTER A. PENSION TRUSTS

"Section 121.001. PENSION TRUSTS. (a) For the purposes of this subchapter, a pension trust is an express trust:

"(1) containing or relating to property;

"(2) created by an employer as part of a stock-bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan for the benefit of some or all of the employer's employees;

"(3) to which contributions are made by the employer, by some or all of the employees, or by both; and

"(4) created for the principal purpose of distributing to the employees, or the successor to their beneficial interest in the trust, the principal or income, or both, of the property held in trust.

"(b) This subchapter applies to a pension trust regardless of when the trust was created. (V.A.C.S. Art. 7425d, Sec. 1 (part).)

"Section 121.002. EMPLOYEES OF CONTROLLED CORPORATIONS. For the purposes of this subchapter, the relationship of employer and employee exists between a corporation and its own employees, and between a corporation and the employees of each other corporation that it controls, by which it is controlled, or with which it is under common control through the exercise by one or more persons of a majority of voting rights in one or more corporations. (V.A.C.S. Art. 7425d, Sec. 1 (part).)

"Section 121.003. APPLICATION OF TEXAS TRUST ACT. The Texas Trust Act (Chapters 111 through 115) applies to a pension trust. (V.A.C.S. Art. 7425d, Sec. 2.)

"Section 121.004. RULE AGAINST PERPETUITIES. A pension trust may continue for as long as is necessary to accomplish the

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purposes of the trust and is not invalid under the rule against perpetuities or any other law restricting or limiting the duration of a trust. (V.A.C.S. Art. 7425d, Sec. 3.)

"Section 121.005. ACCUMULATION OF INCOME. Notwithstanding any law limiting the time during which trust income may be accumulated, the income of a pension trust may be accumulated under the terms of the trust for as long as is necessary to accomplish the purposes of the trust. (V.A.C. Art. 7425d, Sec. 4.)

"[Sections 121.006-121.050 reserved for expansion]

"SUBCHAPTER B. DEATH BENEFITS UNDER EMPLOYEES' TRUSTS

"Section 121.051. DEFINITIONS. (a) In this subchapter:

"(1) 'Death benefit' means a benefit of any kind, including the proceeds of a life insurance policy or any other payment, in cash or property, under an employees' trust, a contract purchased by an employees' trust, or a retirement-annuity contract that is payable because of an employee's death to or for the benefit of the employee's beneficiary.

"(2) 'Employee' means a person covered by a plan containing an employees' trust, a person whose interest in an employees' trust has not been fully distributed, and a person covered by a plan containing a retirement-annuity contract.

"(3) 'Employees' trust' means a trust forming a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A.), and pension trusts under Subchapter A.

"(4) 'Retirement-annuity contract' means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A.).

"(5) 'Trust' and 'trustee' have the meanings assigned by the Texas Trust Act (Chapters 111 through 115), except that 'trust' includes any trust, regardless of when it is created.

"(b) References to specific provisions of the Internal Revenue Code of 1954 (26 U.S.C.A.) include corresponding provisions of any subsequent federal tax laws. (V.A.C.S. Art. 7425d-1, Sec. 1.)

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"Section 121.052. PAYMENT OF DEATH BENEFIT TO TRUSTEE. (a)

A death benefit is payable to a trustee of a trust evidenced by a written instrument or declaration existing on the date of an employee's death, or to a trustee named or to be named as trustee of a trust created under an employee's will, if the trustee is designated as beneficiary under the plan containing the employees' trust or under the retirement-annuity contract.

"(b) A trustee of a testamentary trust may be designated under Subsection (a) prior to the execution of the will.

"(c) A death benefit under a will is not payable until the will is probated.

"(d) The trustee shall hold, administer, and dispose of a death benefit payable under this section in accordance with the terms of the trust on the date of the employee's death.

"(e) A death benefit is payable to a trustee of a trust created by the will of a person other than the employee if:

"(1) the will has been probated at the time of the employee's death; and

"(2) the death benefit is payable to the trustee to be held, administered, and disposed of in accordance with the terms of the testamentary trust. (V.A.C.S. Art. 7425d-1, Secs. 2 (part), 3.)

"Section 121.053. VALIDITY OF TRUST DECLARATION. The validity of a trust agreement or declaration is not affected by:

"(1) the absence of a corpus other than the right of the trustee to receive a death benefit as beneficiary;

"(2) the employee's reservation of the right to designate another beneficiary of the death benefit; or

"(3) the existence of authority to amend, modify, revoke, or terminate the agreement or declaration. (V.A.C.S. Art. 7425d-1, Sec. 2 (part).)

"Section 121.054. UNCLAIMED BENEFITS. If a trustee does not claim a death benefit on or before the first anniversary of the employee's death or if satisfactory evidence is provided to a trustee or other fiduciary of the employees' trust or other obligor

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before the first anniversary of the employee's death that there is or will be no trustee to receive the death benefit, the death benefit shall be paid:

"(1) according to the beneficiary designation under the plan containing the employees' trust or under the retirement-annuity contract; or

"(2) if there is no designation in the plan or contract, to the personal representative of the deceased employee's estate. (V.A.C.S. Art. 7425d-1, Sec. 4.)

"Section 121.055. EXEMPTION FROM TAXES AND DEBTS. Unless the trust agreement, declaration of trust, or will provides otherwise, a death benefit payable to a trustee under this subchapter is not:

"(1) part of the deceased employee's estate;

"(2) subject to the debts of the deceased employee or the employee's estate, or to other charges enforceable against the estate; or

"(3) subject to the payment of taxes enforceable against the deceased employee's estate to a greater extent than if the death benefit is payable, free of trust, to a beneficiary other than the executor or administrator of the estate of the employee. (V.A.C.S. Art. 7425d-1, Sec. 5.)

"Section 121.056. COMMINGLING OF ASSETS. A trustee who receives a death benefit under this subchapter may commingle the property with other assets accepted by the trustee and held in trust, either before or after the death benefit is received. (V.A.C.S. Art. 7425d-1, Sec. 6.)

"Section 121.057. PRIOR DESIGNATIONS NOT AFFECTED. This subchapter does not affect the validity of a beneficiary designation made by an employee before April 3, 1975, that names a trustee as beneficiary of a death benefit. (V.A.C.S. Art. 7425d-1, Sec. 7.)

"Section 121.058. CONSTRUCTION. (a) This subchapter is intended to be declaratory of the common law of this state.

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"(b) A court shall liberally construe this subchapter to effect the intent that a death benefit received by a trustee under this subchapter is not subject to the obligations of the employee or the employee's estate unless the trust receiving the benefit expressly provides otherwise.

"(c) A death benefit shall not be included in property administered as part of a testator's estate or in an inventory filed with the county court because of a reference in a will to the death benefit or because of the naming of the trustee of a testamentary trust. (V.A.C.S. Art. 7425d-1, Sec. 8.)

"CHAPTER 122. CHARITABLE TRUSTS

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 122.001. POLICY

"Section 122.002. DEFINITIONS

"Section 122.003. TRUSTEE VACANCY

"[Sections 122.004-122.050 reserved for expansion]

"SUBCHAPTER B. AMENDMENT

"Section 122.051. AMENDMENT BY OPERATION OF LAW

"Section 122.052. PERMISSIVE AMENDMENT BY TRUSTEE

"Section 122.053. ELECTION TO AVOID AMENDMENT BY OPERATION OF LAW

"Section 122.054. EXCEPTION TO TRUSTEE'S AUTHORITY

"CHAPTER 122. CHARITABLE TRUSTS

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 122.001. POLICY. A court shall liberally construe the provisions of this chapter to effect its terms. (V.A.C.S. Art. 7425e, Sec. 5 (part).)

"Section 122.002. DEFINITIONS. (a) In this chapter:

"(1) 'Internal Revenue Code' means the Internal Revenue Code of 1954 (26 U.S.C.A.).

"(2) 'Trust,' 'trustee,' and 'trustor' have the meanings assigned by the Texas Trust Act (Chapters 111 through 115), except that 'trust' includes any trust, regardless of when it is created.

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"(b) References to specific provisions of the Internal Revenue Code include corresponding provisions of any subsequent federal tax laws. (V.A.C.S. Art. 7425e, Sec. 4.)

"Section 122.003. TRUSTEE VACANCY. If a vacancy occurs among the trustees originally appointed under a valid charitable trust agreement and the agreement does not provide for filling the vacancy, the remaining trustees may fill the vacancy by majority vote. (V.A.C.S. Art. 7425a-1.)

"[Sections 122.004-122.050 reserved for expansion]

"SUBCHAPTER B. AMENDMENT

"Section 122.051. AMENDMENT BY OPERATION OF LAW. (a) Except as provided by Section 122.052 and Subsection (b) of this section, the governing instrument of a trust that is a private foundation under Section 509, Internal Revenue Code, a nonexempt charitable trust that is treated as a private foundation under Section 4947(a)(1), Internal Revenue Code, or, to the extent that Section 508(e), Internal Revenue Code, is applicable to it, a nonexempt split-interest trust under Section 4947(a)(2), Internal Revenue Code, is considered to contain provisions stating that the trust:

"(1) shall make distributions at times and in a manner as not to subject the trust to tax under Section 4942, Internal Revenue Code;

"(2) may not engage in an act of self-dealing that would be subject to tax under Section 4941, Internal Revenue Code;

"(3) may not retain excess business holdings that would subject it to tax under Section 4943, Internal Revenue Code;

"(4) may not make an investment that would subject it to tax under Section 4944, Internal Revenue Code; and

"(5) may not make a taxable expenditure that would subject it to tax under Section 4945, Internal Revenue Code.

"(b) If a trust was created before January 1, 1970, this section applies to it only for its taxable years that begin on or after January 1, 1972.

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"(c) This section applies regardless of any provision in a trust's governing instrument and regardless of any other law of this state, including the provisions of this title. (V.A.C.S. Art. 7425e, Sec. 1.)

"Section 122.052. PERMISSIVE AMENDMENT BY TRUSTEE. (a) If the trustor of a trust that is described under Subsection (a) of Section 122.051 is living and competent and consents, the trustee may, without judicial proceedings, amend the governing instrument of the trust to expressly include the provisions required by Section 508(e), Internal Revenue Code.

"(b) The amendment must be in writing, and it is effective when a duplicate original is filed with the attorney general's office. (V.A.C.S. Art. 7425e, Sec. 3.)

"Section 122.053. ELECTION TO AVOID AMENDMENT BY OPERATION OF LAW. (a) If the trustor of a trust described under Subsection (a) of Section 122.051 is living and competent and consents, the trustee may, without judicial proceedings, amend the trust to expressly exclude the application of Subsection (a) of Section 122.051.

"(b) The amendment must be in writing, and it is effective when a duplicate original is filed with the attorney general's office. (V.A.C.S. Art. 7425e, Sec. 2(a).)

"Section 122.054. EXCEPTION TO TRUSTEE'S AUTHORITY. (a) If a charitable remainder unitrust, annuity trust, or pooled income fund is intended to qualify for a federal tax deduction under Section 664, Internal Revenue Code, the trustee of the trust may not:

"(1) permit real property held in trust to be occupied by a surviving spouse or minor child of the trustor;

"(2) invest trust funds in real property to be used for a home by the wife or minor child even though reasonably necessary for the maintenance of the surviving wife or minor child; or

"(3) pay funeral expenses of a beneficiary actually receiving benefits from the trust estate at the time of the beneficiary's death.

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"(b) This section takes precedence over the provisions of the Texas Trust Act (Chapters 111 through 115) relating to the powers, duties, and responsibilities of trustees. (V.A.C.S. Art. 7425e, Sec. 2(b).)

"[Chapters 123-140 reserved for expansion]

"TITLE 10. MISCELLANEOUS BENEFICIAL PROPERTY INTERESTS

"SUBTITLE A. PERSONS UNDER DISABILITY

"CHAPTER 141. GIFTS TO MINORS

"Section 141.001. SHORT TITLE

"Section 141.002. DEFINITIONS

"Section 141.003. GIFTS TO MINORS

"Section 141.004. MANNER OF MAKING GIFT

"Section 141.005. EFFECT OF GIFT

"Section 141.006. DUTIES AND POWERS OF CUSTODIAN

"Section 141.007. CUSTODIAN'S EXPENSES, COMPENSATION, BOND,
AND LIABILITIES

"Section 141.008. EXEMPTION OF THIRD PERSONS FROM LIABILITY

"Section 141.009. RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN;
BOND

"Section 141.010. SUCCESSOR CUSTODIAN

"Section 141.011. SUPPORT OF MINOR

"Section 141.012. ACCOUNTING

"Section 141.013. CONSTRUCTION

"Section 141.014. PROPERTY HELD ON AUGUST 27, 1973

"TITLE 10. MISCELLANEOUS BENEFICIAL PROPERTY INTERESTS

"SUBTITLE A. PERSONS UNDER DISABILITY

"CHAPTER 141. GIFTS TO MINORS

"Section 141.001. SHORT TITLE. This chapter may be cited as the Texas Uniform Gifts to Minors Act. (V.A.C.S. Art. 5923-101, Sec. 10.)

"Section 141.002. DEFINITIONS. In this chapter:

"(1) 'Adult' means an individual who is 18 years of age or older.

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"(2) 'Bank' means a state or national bank, a state or federal savings and loan association, a federal credit union, or an insured credit union chartered under the laws of this state.

"(3) 'Broker' means a person lawfully in the business of effecting transactions in securities for the account of others. The term includes a bank that effects those transactions. It also includes a person who buys and sells securities for the person's own account, through a broker or otherwise, as part of a regular business.

"(4) 'Court' means a court with original probate jurisdiction.

"(5) 'Custodial property' includes the property given to a minor under this chapter, the income from the property, and the direct and indirect proceeds from the disposition of the property.

"(6) 'Custodian' means the person designated to hold property given to a minor under this chapter.

"(7) 'Guardian' means a general guardian, guardian, tutor, or curator of the property, estate, or person of a minor.

"(8) 'Issuer' means an individual, a firm, or a corporation that places its name on a security, other than as transfer agent, as evidence that the security represents a share, right of participation, or other interest in property or an enterprise or as evidence of a duty represented by the security, including a substitute for the responsibilities of the issuer.

"(9) 'Legal representative' means the executor, independent executor, administrator, independent administrator, general guardian, guardian, committee, conservator, tutor, or curator of a person's property or estate.

"(10) 'Life or endowment insurance policy' or 'annuity contract' means a life or endowment insurance policy or annuity contract on the life of a minor or a member of the minor's family.

"(11) 'Member of a minor's family' means a minor's parent, grandparent, brother, sister, aunt, or uncle, whether by blood or adoption.

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"(12) 'Minor' means an individual who is less than 18 years of age and who has never been married, except for an individual whose disabilities of minority have been generally removed.

"(13) 'Registered security' means a security that identifies the owner of the security or the rights it evidences, the transfer of which may be registered on the transfer books of the issuer.

"(14) 'Security' means any interest or instrument commonly known as a security, including a note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate, investment contract, an oil, gas, or mining title or lease, production payments under an oil, gas, or mining title or lease, as well as a certificate of interest or participation in, a temporary or interim receipt or certificate of deposit for, or a warrant or right to subscribe to or purchase a security. The term does not include an interest or instrument issued by the donor.

"(15) 'Transfer agent' means an individual, a firm, or a corporation that is an authenticating trustee, registrar, or other agent registering the issuance, transfer, or cancellation of securities for an issuer.

"(16) 'Trust company' means a bank or company authorized to exercise trust powers in this state. (V.A.C.S. Art. 5923-101, Sec. 1.)

"Section 141.003. GIFTS TO MINORS. (a) An adult may make an inter vivos gift under this chapter to an individual who is a minor on the date of the gift by beneficiary designation with a company that has issued a life or endowment insurance policy or annuity contract.

"(b) An adult may make an inter vivos or a testamentary gift under this chapter to an individual who is a minor on the date of the gift if the gift is:

"(1) money;

"(2) a security;

"(3) a life or endowment insurance policy or its proceeds;

"(4) an annuity contract or its proceeds;

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"(5) real property; or

"(6) tangible personal property.

"(c) A legal representative of a decedent's estate who has received letters of office or a trustee of a trust on behalf of a minor who is an heir, legatee, or devisee of the decedent's estate or a beneficiary of the trust may pay or transfer to a custodian for the minor under this chapter or under a comparable Uniform Gifts to Minors Act of another jurisdiction, without a court order, property that is distributable to the minor and eligible for a gift if:

"(1) the representative or trustee considers the distribution to be in the best interest of the minor; and

"(2) the distribution is not expressly forbidden by a will, trust agreement, court order, or other instrument governing disposition of the property.

"(d) A legal representative or trustee paying or transferring property under Subsection (c) shall designate an adult member of the minor's family or a guardian of the minor to serve as custodian of the property. The custodianship is governed by this chapter as though the representative or trustee were a donor. The legal representative or trustee is released from responsibility for the distributed assets on obtaining a receipt from the custodian.

"(e) A gift under this chapter may not be made to more than one minor, and there may be only one custodian of the gift.

"(f) A donor who makes a gift under this chapter shall promptly put the gift in the possession and control of the custodian. The consummation of a gift under this chapter is not affected by:

"(1) the failure of the donor to deliver the gift;

"(2) the donor's designation of an ineligible person as custodian; or

"(3) refusal of the custodian to serve. (V.A.C.S. Art. 5923-101, Secs. 2(a) (part), (b), (c), (d), (e).)

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"Section 141.004. MANNER OF MAKING GIFT. (a) For the purpose of this chapter, gifts are made in the manner provided by this section.

"(b) A donor makes a gift of a registered security by registering it in the name of the donor, another adult person, or a trust company followed, in substance, by: 'as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act.'

"(c) A donor makes a gift of an unregistered security by delivering to another adult person or to a trust company the security and a statement of gift signed by the donor and the custodian that states, in substance,

'GIFT UNDER THE TEXAS UNIFORM GIFTS TO MINORS ACT

I, (name of donor), hereby deliver to
(name of custodian) as custodian for
(name of minor) under the Texas Uniform
Gifts to Minors Act, the following
security(ies): (insert an appropriate description of
the security or securities delivered that is sufficient
to identify it or them)

(signature of donor)
(name of custodian) hereby acknowledges
receipt of the above described security(ies) as
custodian for the above minor under the Texas Uniform
Gifts to Minors Act

Dated: _____

(signature of custodian).

"(d) A donor makes a gift of money by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult, or a bank with trust powers followed, in substance, by: 'as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act.'

"(e) A donor makes a gift of a life or endowment insurance policy or an annuity contract by delivering the policy or contract to the custodian after it has been assigned to the custodian, in

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the custodian's name, followed, in substance, by: 'as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act.'

"(f) A donor makes a gift of the proceeds of a life or endowment insurance policy or an annuity contract by making the proceeds payable to the custodian in the custodian's name, followed, in substance, by: 'as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act.'

"(g) A donor makes a gift of an interest in real property by executing and delivering the appropriate conveyance of the interest to the custodian in the custodian's name, followed, in substance, by: 'as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act.'

"(h) A donor makes a gift of an interest in tangible personal property by transferring the property by the appropriate document to the custodian in the custodian's name, followed, in substance, by: 'as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act.'

"(i) A donor makes a gift of property under a will or a trust by giving the property to an adult or to a trust company followed, in substance, by: 'as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act.'

"(j) If the donor of a gift under Subsection (i) does not designate a custodian or if the designated custodian dies or is unable or unwilling to serve, the personal representative or trustee shall designate a custodian from those that are eligible under this chapter to serve as successor custodian, and the representative or trustee shall transfer the gift to the custodian in the form and manner provided by this chapter. The custodian's receipt is a release and discharge for the gift.

"(k) A personal representative may elect the procedures under this chapter to distribute a testamentary gift. (V.A.C.S. Art. 5923-101, Sec. 2(a) (part).)

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"Section 141.005. EFFECT OF GIFT. (a) A gift under this chapter is irrevocable and indefeasibly vests legal title to the property in the minor, but a guardian of the minor has no right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

"(b) A donor who makes a gift under this chapter impliedly incorporates the provisions of this chapter in the donor's gift, trust, or will and grants to the custodian and third persons dealing with the custodian the powers, rights, and immunities provided by this chapter. (V.A.C.S. Art. 5923-101, Sec. 3.)

"Section 141.006. DUTIES AND POWERS OF CUSTODIAN. (a) A custodian shall collect, hold, manage, invest, and reinvest the custodial property.

"(b) The custodian may pay to the minor or expend for the minor's benefit as much of the custodial property as the custodian considers advisable for the support, maintenance, education, and benefit of the minor:

"(1) in the manner, at the time, and to the extent the custodian considers suitable and proper;

"(2) without a court order;

"(3) without regard to the duty or ability of the custodian or another person to support the minor;

"(4) without regard to the minor's ability to provide support; and

"(5) without regard to the minor's other income or property that may be applicable to or available for the minor's support.

"(c) The custodian shall deliver or pay unexpended custodial property:

"(1) to the minor, if the minor becomes 18 years of age or ceases to be a minor because of marriage or the general removal of disabilities of minority; or

"(2) to the minor's estate, if the minor dies before becoming 18 years of age.

"(d) Notwithstanding statutes restricting the investments of fiduciaries, the custodian shall invest and reinvest the custodial

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property as would a prudent person of discretion and intelligence who is seeking a reasonable income and the preservation of the person's capital, except that the custodian may retain, in the custodian's discretion and without liability to the minor or the minor's estate, a security given to the minor under this chapter.

"(e) The custodian may dispose of custodial property in a manner, when, for the price, and on the terms the custodian considers desirable, but the custodian may only acquire as custodial property a security, money, a life or endowment insurance policy, an annuity contract, real property, or, if the custodian is a trust company, an interest in one or more common trust funds maintained by the custodian under Subchapter E, Chapter 113.

"(f) If the issuer of a security that is custodial property is dissolved or liquidated, the custodian may receive the minor's share of any property resulting from the dissolution or liquidation and retain and manage it as custodial property, but the custodian may sell or exchange it only for property authorized to be acquired as custodial property.

"(g) The custodian may vote a security, insurance policy, or annuity contract held as custodial property in person or by general or limited proxy.

"(h) The custodian may consent directly or through a committee or other agent to any action by the issuer of a security held as custodial property, including the:

"(1) reorganization, consolidation, merger, dissolution, or liquidation of the issuer; or

"(2) sale, lease, pledge, or mortgage of property by or to the issuer.

"(i) The custodian may execute and deliver any instrument the custodian considers advisable to carry out the custodian's powers.

"(j) The custodian may perform the same acts regarding custodial real property as an unmarried adult or a trustee under the Texas Trust Act (Chapters 111 through 115) may perform in regard to real property.

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"(k) The custodian shall:

"(1) register custodial securities that may be registered in the name of the custodian followed, in substance, by: 'as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act';

"(2) deposit custodial money with a broker or in a bank in the name of the custodian followed, in substance, by: 'as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act'; and

"(3) clearly identify other custodial property as custodial property and keep the custodial property separate from the custodian's own property.

"(1) The custodian shall keep records of all transactions involving custodial property and shall allow inspection of the records at reasonable intervals by:

"(1) a parent of the minor;

"(2) a legal representative of the minor; or

"(3) the minor, if the minor is 14 years of age or older.

"(n) The custodian has the same incidents of ownership concerning a life or endowment insurance policy or an annuity contract that is part of the custodial property that an owner would have, and the custodian may use custodial property to pay premiums on the policy or contract. If the policy or contract is on the life of the minor, the custodian shall designate the minor's estate as the beneficiary of the policy or contract. If the policy or contract is on the life of a person other than the minor, the custodian shall be the beneficiary as custodian for the minor.

"(n) In addition to the custodian's other rights and powers under this chapter, the custodian has as a power in trust the same rights and powers regarding the custodial property as a guardian has regarding noncustodial property. (V.A.C.S. Art. 5923-101, Secs. 4(a), (b), (d), (e), (f), (g), (h), (i), (j).)

"Section 141.007. CUSTODIAN'S EXPENSES, COMPENSATION, BOND, AND LIABILITIES. (a) A custodian is entitled to reimbursement

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from the custodial property for reasonable expenses incurred in the performance of the custodian's duties.

"(b) The custodian may serve without compensation, or a custodian who is not the donor may receive from the custodial property a reasonable compensation for service determined, in the following order, by:

"(1) the instructions of the donor at the time the gift is made;

"(2) the statute applicable to guardians; or

"(3) a court order.

"(c) Except as provided by Section 141.009, the custodian is not required to give a performance bond.

"(d) A custodian that is not compensated for services is not liable for a loss to the custodial property unless the loss results from the custodian's:

"(1) bad faith;

"(2) intentional wrongdoing;

"(3) gross negligence; or

"(4) failure to maintain the standard of prudence required by this chapter in investing the custodial property. (V.A.C.S. Art. 5923-101, Sec. 5)

"Section 141.008. EXEMPTION OF THIRD PERSONS FROM LIABILITY. An issuer, transfer agent, bank, broker, or other person acting on the instructions of or otherwise dealing with a person who purports to be a donor or custodian under this chapter is not responsible for:

"(1) determining if the person designated by the donor or acting as custodian has been duly designated;

"(2) determining if an act of the person, including a purchase, sale, or transfer to or by the person, is in accordance with or authorized by this chapter;

"(3) questioning the validity or propriety under this chapter of an instrument or any instructions executed or given by a person acting as donor or custodian; or

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"(4) overseeing the application by a custodian of money or other property paid or delivered to the custodian. (V.A.C.S. Art. 5923-101, Sec. 6.)

"Section 141.009. RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN; BOND. (a) A custodian, including a custodian who is the donor, may petition the court for permission to resign and for the designation of a successor custodian.

"(b) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor is 14 years of age or older may petition the court, for cause shown in the petition, to remove the custodian and permit the designation of a successor or alternatively to require the custodian to give a performance bond.

"(c) On receiving a petition under this section, the court shall issue an order to the persons, returnable on such notice as the court requires, to show cause why the petition should not be granted. The court may grant the relief the court considers in the best interest of the minor. (V.A.C.S. Art. 5923-101, Secs. 7(c), (e), (f).)

"Section 141.010. SUCCESSOR CUSTODIAN. (a) Only an adult member of the minor's family, a guardian of the minor, or a trust company is eligible to serve as successor custodian.

"(b) The successor custodian has the same rights, powers, duties, and immunities as the original custodian.

"(c) The successor custodian is:

"(1) the person designated by the resigning custodian, other than the donor, in an instrument of resignation executed by the custodian in the presence of a subscribing witness, other than the successor, and delivered to the minor and the successor;

"(2) if the custodian does not effectively designate a successor, an eligible person that is designated by the donor in a dated instrument of designation executed by the donor in the presence of a subscribing witness other than the successor;

"(3) if neither the custodian nor the donor effectively designates a successor, the minor's guardian, or if there is no

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guardian but the minor is 14 years of age or older, the person designated by the minor in the manner prescribed for the designation of a successor;

"(4) if the custodian, donor, or guardian does not effectively designate a successor and the minor is less than 14 years of age:

"(A) the person designated by a parent of the minor; or

"(B) if there is not a parent of the minor, the person designated by the court on the petition of an adult member of the minor's family.

"(d) The designation of a successor custodian under Subsection (c) is effective as to each item of custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or the custodian's legal representative:

"(1) causes a registered security, life or endowment insurance policy, annuity contract, or interest in real property to be registered in the name of or conveyed to the successor custodian as, in substance, 'custodian for (name of minor) under the Texas Uniform Gifts to Minors Act'; and

"(2) delivers or causes to be delivered to the successor custodian the other custodial property, the instrument designating the successor custodian, and any other instrument required for the transfer to the successor. (V.A.C.S. Art. 5923-101, Secs. 7(a), (b), (d).)

"Section 141.011. SUPPORT OF MINOR. On the petition of a parent or guardian of the minor or on the petition of the minor if the minor is 14 years of age or older, the court may order the custodian to pay to or expend for the minor as much of the custodial property as is necessary for the minor's support, maintenance, or education. (V.A.C.S. Art. 5923-101, Sec. 4(c).)

"Section 141.012. ACCOUNTING. (a) A donor, the legal representative of the donor, an adult member of the minor's family, the legal representative of the minor, or the minor if the minor is 14 years of age or older may petition the court for an accounting by the custodian or the custodian's legal representative.

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"(b) In a proceeding under this chapter or otherwise, the court may require or permit the custodian or the custodian's legal representative to account.

"(c) If the court removes the custodian, the court shall:

"(1) require an accounting;

"(2) order delivery of the custodial property to the successor custodian; and

"(3) order the execution of the instruments required for the transfer of the custodial property. (V.A.C.S. Art. 5923-101, Sec. 8.)

Section 141.013. CONSTRUCTION. This chapter is not the exclusive method for making a gift to a minor. (V.A.C.S. Art. 5923-101, Sec. 9.)

"Section 141.014. PROPERTY HELD ON AUGUST 27, 1973. (a) If a custodian held property under this chapter on August 27, 1973, the custodian may elect to apply this chapter with respect to the minor and the property held at that time, along with its proceeds and reinvestments, as though Chapter 626, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5923b, Vernon's Texas Civil Statutes), which lowered the age of majority from age 21 to age 18, had not been enacted.

"(b) The custodian must notify the minor in writing of this election, after which the custodian shall treat any reference to the age of 18 in this chapter as a reference to the age of 21.

"(c) The custodian may revoke any election made under this section.

"(d) This section expires September 1, 1995. (V.A.C.S. Art. 5923b, Sec. 2 (part).)

**"CHAPTER 142. MANAGEMENT OF PROPERTY RECOVERED IN SUIT
BY A NEXT FRIEND**

"Section 142.001. MANAGEMENT BY DECREE

"Section 142.002. MANAGEMENT BY BONDED MANAGER

"Section 142.003. COMPENSATION AND DUTIES OF MANAGERS

"Section 142.004. INVESTMENT IN INSURED FINANCIAL INSTITUTIONS

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"Section 142.005. TRUST FOR MINOR'S PROPERTY

"Section 142.006. CLAIMS AGAINST PROPERTY

"CHAPTER 142. MANAGEMENT OF PROPERTY RECOVERED IN
SUIT BY A NEXT FRIEND

"Section 142.001. MANAGEMENT BY DECREE. (a) In a suit in which a minor or other person who has no legal guardian is represented by a next friend, the court, on application and hearing, may provide by decree for the investment of funds accruing to the minor or other person under the judgment in the suit.

"(b) If the decree is made during vacation, it must be recorded in the minutes of the succeeding term of the court. (V.A.C.S. Art. 1994, Subdiv. 2.)

"Section 142.002. MANAGEMENT BY BONDED MANAGER. (a) In a suit in which a minor or other person who has no legal guardian is represented by a next friend, the court in which a judgment is rendered may by an order entered of record authorize the next friend or another person to take possession of money or other personal property recovered under the judgment for the minor or other person represented.

"(b) The next friend or other person may not take possession of the property until he has executed a bond as principal that:

"(1) is in an amount at least double the value of the property or, if a surety on the bond is a solvent surety company authorized under the law of this state to execute the bond, is in an amount at least equal to the value of the property;

"(2) is payable to the county judge; and

"(3) is conditioned on the obligation of the next friend or other person to use the property under the direction of the court for the benefit of its owner and to return the property, with interest or other increase, to the person entitled to receive the property when ordered by the court to do so. (V.A.C.S. Art. 1994, Subdiv. 1.)

"Section 142.003. COMPENSATION AND DUTIES OF MANAGERS. (a) A person who manages property under Section 142.001 or 142.002 is entitled to receive compensation as allowed by the court.

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"(b) The person shall make dispositions of the property as ordered by the court and shall return the property into court on the order of the court. (V.A.C.S. Art. 1994, Subdiv. 3.)

"Section 142.004. INVESTMENT IN INSURED FINANCIAL INSTITUTIONS. (a) In a suit in which a minor or other person who has no legal guardian is represented by a next friend, any money recovered by the plaintiff, if not otherwise managed under this chapter, may be invested by the next friend or the clerk of the court in:

"(1) savings accounts or certificates of a savings and loan association domiciled in this state and insured by the F.S.L.I.C.; or

"(2) interest-bearing time deposits in a bank doing business in this state and insured by the F.D.I.C.

"(b) If the money invested under this section may not be withdrawn from the financial institution without an order of the court, a next friend who makes the investment is not required to execute a bond with respect to the money.

"(c) When money invested under this section is withdrawn, the court may:

"(1) on a finding that the person entitled to receive the money is no longer under the disability, order the funds turned over to the person; or

"(2) order management of the funds under another provision of this chapter. (V.A.C.S. Art. 1994, Subdiv. 5.)

"Section 142.005. TRUST FOR MINOR'S PROPERTY. (a) In a suit in which a minor who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court may, on application by the next friend or the guardian ad litem and on a finding that the creation of a trust would be in the best interests of the minor, enter a decree in the record directing the clerk to deliver any funds accruing to the minor under the judgment to a trust company or a state or national bank having trust powers in this state.

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"(b) The decree shall provide for the creation of a trust for the management of the funds for the benefit of the minor and for terms, conditions, and limitations of the trust, as determined by the court, that are not in conflict with the following mandatory provisions:

"(1) the minor is the sole beneficiary of the trust;

"(2) the trustee may disburse amounts of the trust's principal, income, or both as the trustee in his sole discretion determines to be reasonably necessary for the health, education, support, or maintenance of the beneficiary;

"(3) the income of the trust not disbursed under Subdivision (2) is added to the principal of the trust;

"(4) the trust terminates on the death of the beneficiary, on the beneficiary's attaining an age stated in the trust, or on the 25th birthday of the beneficiary, whichever occurs first;

"(5) the trustee serves without bond; and

"(6) the trustee receives reasonable compensation paid from trust's income, principal, or both on application to and approval of the court.

"(c) A trust established under this section may provide that:

"(1) distributions of the trust principal before the termination of the trust may be made from time to time as the beneficiary attains designated ages and at designated percentages of the principal; and

"(2) distributions, payments, uses, and applications of all trust funds may be made to the legal or natural guardian of the beneficiary or to the person having custody of the beneficiary or may be made directly to or expended for the benefit, support, or maintenance of the beneficiary without the intervention of any legal guardian or other legal representative of the beneficiary.

"(d) A trust created under this section may be amended, modified, or revoked by the court at any time before its termination, but is not subject to revocation by the beneficiary or

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a guardian of the beneficiary's estate. If the trust is revoked by the court before the beneficiary is 18 years old, the court may provide for the management of the trust principal and any undistributed income as authorized by this chapter. If the trust is revoked by the court after the beneficiary is 18 years old, the trust principal and any undistributed income shall be delivered to the beneficiary after the payment of all proper and necessary expenses.

"(e) On the termination of the trust under its terms or on the death of the beneficiary, the trust principal and any undistributed income shall be paid to the beneficiary or to the representative of the estate of the deceased beneficiary.

"(f) A trust established under this section prevails over any other law concerning minors or their property, and the trust continues in force and effect until terminated or revoked, notwithstanding the appointment of a guardian of the estate of the minor or the attainment of the age of majority by the minor. (V.A.C.S. Art. 1994, Subdiv. 6.)

"Section 142.006. CLAIMS AGAINST PROPERTY. If any person claims an interest in property subject to management under this chapter, the court having authority over the property may hear evidence on the interest and may order the claim or the portion of the claim found to be just to be paid to the person entitled to receive it. (V.A.C.S. Art. 1994, Subdiv. 4.)

"[Chapters 143-160 reserved for expansion]

"SUBTITLE B. FIDUCIARIES

"CHAPTER 161. MANAGEMENT AND CONTROL OF SECURITIES

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 161.001. DEFINITIONS

"Section 161.002. TRUSTEE OR GOVERNMENT INSTRUMENT CONTROLS

"[Sections 161.003-161.020 reserved for expansion]

"SUBCHAPTER B. CUSTODIAN OF SECURITIES

"Section 161.021. AUTHORITY OF FIDUCIARY

"Section 161.022. SEPARATE ASSETS

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"Section 161.023. EXPENSE OF CUSTODIANSHIP

"Section 161.024. RECORDS

"Section 161.025. REDELIVERY OF SECURITY HELD BY NOMINEE

"Section 161.026. DISPOSITION OF SECURITY HELD BY NOMINEE

"Section 161.027. LIABILITY

"Section 161.028. CERTIFICATION

"[Sections 161.029-161.050 reserved for expansion]

"SUBCHAPTER C. DEPOSIT OF SECURITY WITH FEDERAL RESERVE

BANK OR CLEARING CORPORATION

"Section 161.051. APPLICATION

"Section 161.052. AUTHORITY OF FIDUCIARY

"Section 161.053. BULK HOLDINGS

"Section 161.054. RECORDS

"Section 161.055. REGULATION

"Section 161.056. BOOK TRANSFERS

"Section 161.057. LIABILITY

"Section 161.058. CERTIFICATION

"SUBTITLE B. FIDUCIARIES

"CHAPTER 161. MANAGEMENT AND CONTROL OF SECURITIES

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 161.001. DEFINITIONS. In this chapter:

"(1) 'Fiduciary' means an executor, administrator, or trustee of an express trust, including a corporation or a natural person acting as fiduciary, and a successor or substitute, whether or not designated in a trust instrument.

"(2) 'Clearing corporation' has the meaning assigned by Section 8.102, Business & Commerce Code, as amended. (V.A.C.S. Art. 7425a-2, Sec. 1; Art. 7425a-3, Sec. 1 (part).)

"Section 161.002. DECREE OR GOVERNING INSTRUMENT CONTROLS. The authority granted in this chapter is subject to contrary or limiting provisions in the instrument or court order appointing the fiduciary of the securities or in a subsequent court order. (V.A.C.S. Art. 7425a-2, Sec. 2(A) (part); Art. 7425a-3, Secs. 2 (part), 3(a) (part).)

"[Sections 161.003-161.020 reserved for expansion]

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"SUBCHAPTER B. CUSTODIAN OF SECURITIES

"Section 161.021. AUTHORITY OF FIDUCIARY. A fiduciary who holds a security in a fiduciary capacity may:

"(1) employ a bank incorporated in this state or a national bank located in this state as custodian of the security; and

"(2) whether the fiduciary is an individual or a bank and if any individual who is a co-fiduciary with the bank consents, authorize the security to be registered and held in the name of a nominee of the bank without disclosing the fiduciary relationship. (V.A.C.S. Art. 7425a-2, Secs. 2(A) (part), (B) (part).)

"Section 161.022. SEPARATE ASSETS. (a) A bank holding a security under this subchapter, whether in registered or bearer form, at all times shall keep the security separate from the bank's assets. The bank may:

"(1) hold separately the certificates representing securities that periodically comprise the assets of a particular fiduciary account from those of all other accounts; or

"(2) without certification as to ownership attached, hold in bulk certificates representing the same class of securities of the same issuer that periodically comprise the assets of different fiduciary accounts and, to the extent feasible, merge certificates of small denomination into one or more certificates of large denomination.

"(b) A bank that holds security certificates in bulk is subject to the regulations issued by the Finance Commission of Texas if the bank is chartered by this state or by the comptroller of the currency if the bank is a national banking association. (V.A.C.S. Art. 7425a-2, Secs. 2(A) (part), (B) (part).)

"Section 161.023. EXPENSE OF CUSTODIANSHIP. Unless the fiduciary is a corporation, the cost of employing a bank as a custodian of securities under this subchapter is a charge against the estate or trust. (V.A.C.S. Art. 7425a-2, Sec. 2(A) (part).)

"Section 161.024. RECORDS. A bank holding a security under Section 161.021, whether in registered or bearer form, at all times

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shall keep records showing the ownership of the security.
(V.A.C.S. Art. 7425a-2, Secs. 2(A) (part), (B) (part).)

"Section 161.025. REDELIVERY OF SECURITY HELD BY NOMINEE.

(a) A bank holding a security in the name of a nominee of the bank under this subchapter may not redeliver the security to the individual fiduciary who authorized its registration in the name of the nominee without registering the security in the name of the individual fiduciary, as fiduciary.

"(b) A sale of the security by the bank at the direction of the individual fiduciary is not a redelivery. (V.A.C.S. Art. 7425a-2, Sec. 2(B) (part).)

"Section 161.026. DISPOSITION OF SECURITY HELD BY NOMINEE.

A bank holding a security in the name of a nominee under this subchapter may make any disposition of the security that is authorized or ordered by a court having jurisdiction of the estate or trust. (V.A.C.S. Art. 7425a-2, Sec. 2(B) (part).)

"Section 161.027. LIABILITY. A bank holding a security in the name of a nominee under this subchapter is liable for a loss resulting from the acts of the bank's nominee with respect to the security. (V.A.C.S. Art. 7425a-2, Sec. 2(B) (part).)

"Section 161.028. CERTIFICATION. (a) On the demand of a fiduciary employing a bank to hold a security as custodian under this subchapter, the bank shall identify in a written certification the securities it holds for the fiduciary.

"(b) On the demand of a party, or the attorney of a party, to an accounting by a bank holding a security in the name of a nominee under this subchapter, the bank shall identify in a written certification the securities it holds as fiduciary. (V.A.C.S. Art. 7425a-2, Secs. 2(A) (part), (B) (part).)

"[Sections 161.029-161.050 reserved for expansion]

"SUBCHAPTER C. DEPOSIT OF SECURITY WITH FEDERAL RESERVE BANK
OR CLEARING CORPORATION

"Section 161.051. APPLICATION. (a) Except as provided by Subsection (b), this subchapter applies to a fiduciary holding a

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security in its fiduciary capacity and to a bank, trust company, or private banker holding a security as a fiduciary, custodian, custodian for a fiduciary, or managing agent, regardless of:

"(1) the date of the agreement, instrument, or court order by which the fiduciary, custodian, or managing agent is appointed; and

"(2) ownership by the fiduciary, custodian, or managing agent of capital stock of the clearing corporation.

"(b) This subchapter does not apply to a security held by a fiduciary, bank, trust company, or private banker on behalf of a domestic insurance company, unless the prior express approval of the State Board of Insurance is obtained. The board may grant approval to all domestic insurance companies generally, or to specific insurance companies on a case-by-case basis.

"(c) For the purposes of this subchapter, 'fiduciary' includes a state or national bank acting in a fiduciary capacity. (V.A.C.S. Art. 7425a-3, Secs. 1 (part), 4.)

"Section 161.052. **AUTHORITY OF FIDUCIARY.** A fiduciary holding a security in its fiduciary capacity and a bank, trust company, or private banker holding a security as a custodian for a fiduciary, a managing agent, or a custodian may deposit or arrange for the deposit of the security with:

"(1) the Federal Reserve Bank of Dallas if the United States has agreed to pay or has guaranteed payment of the security's principal and interest; or

"(2) a clearing corporation, either in this state or elsewhere, regardless of whether the clearing corporation conducts or is authorized to conduct business in this state. (V.A.C.S. Art. 7425a-3, Secs. 2 (part), 3(a) (part).)

"Section 161.053. **BULK HOLDINGS.** A clearing corporation may merge and hold in bulk certificates representing the same class of securities of the same issuer that are deposited with it under this subchapter, together with any other securities deposited with the clearing corporation by any person in the name of the nominee of

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the clearing corporation, regardless of the ownership of the securities. Certificates of small denomination may be merged into one or more certificates of larger denomination. (V.A.C.S. Art. 7425a-3, Sec. 3(a) (part).)

"Section 161.054. RECORDS. A fiduciary, bank, trust company, or private banker depositing a security under this subchapter shall show in its records at all times the ownership of the securities deposited in the account. (V.A.C.S. Art. 7425a-3, Secs. 2 (part), 3(a) (part).)

"Section 161.055. REGULATION. A bank, trust company, or private banker depositing securities under this subchapter is subject to the regulations issued by the Finance Commission of Texas if the institution is chartered by this state or is private or by the comptroller of the currency if the institution is a national banking association. (V.A.C.S. Art. 7425a-3, Secs. 2 (part), 3(a) (part).)

"Section 161.056. BOOK TRANSFERS. The Federal Reserve Bank of Dallas or a clearing corporation holding securities deposited under this subchapter may transfer ownership of or other interests in the securities by making entries in the books of the bank or corporation and without physical delivery of certificates representing the securities. (V.A.C.S. Art. 7425a-3, Secs. 2 (part), 3(a) (part).)

"Section 161.057. LIABILITY. A fiduciary who deposits securities in a clearing corporation is liable to the beneficial owner of the securities for a loss resulting from the acts or omissions of the clearing corporation. This subchapter does not affect a liability between the fiduciary and the clearing corporation. (V.A.C.S. Art. 7425a-3, Sec. 3(b).)

"Section 161.058. CERTIFICATION. (a) On the demand of a fiduciary for whom a bank, trust company, or private banker is acting as custodian, the bank, trust company, or private banker shall identify in a written certification the securities deposited by the bank, trust company, or private banker with the federal

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reserve bank or in the clearing corporation for the account of the fiduciary.

"(b) On the demand of a party, or the attorney of a party, to an accounting by a fiduciary or by a bank, trust company, or private banker that is acting as a fiduciary, a custodian, a custodian for a fiduciary, or a managing agent, the fiduciary, bank, trust company, or private banker shall identify in a written certification to the party the securities deposited by the fiduciary, bank, trust company, or private banker with the federal reserve bank or the clearing corporation. (V.A.C.S. Art. 7425a-3, Secs. 2 (part), 3(a) (part).)

"CHAPTER 162. CONSTRUCTION PAYMENTS, LOAN RECEIPTS, AND
MISAPPLICATION OF TRUST FUNDS

"SUBCHAPTER A. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS

"Section 162.001. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS
AS TRUST FUNDS

"Section 162.002. CONTRACTORS AS TRUSTEES

"Section 162.003. BENEFICIARIES OF TRUST FUNDS

"Section 162.004. APPLICATION

"[Sections 162.005-162.030 reserved for expansion]

"SUBCHAPTER B. MISAPPLICATION OF TRUST FUNDS

"Section 162.031. MISAPPLICATION OF TRUST FUNDS

"Section 162.032. PENALTIES

"Section 162.033. ELECTION OF OFFENSES

"CHAPTER 162. CONSTRUCTION PAYMENTS, LOAN RECEIPTS, AND
MISAPPLICATION OF TRUST FUNDS

"SUBCHAPTER A. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS

"Section 162.001. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS AS TRUST FUNDS. (a) Construction payments are trust funds under this chapter if the payments are made to a contractor or subcontractor or to an officer, director, or agent of a contractor or subcontractor, under a construction contract for the improvement of specific real property in this state.

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"(b) Loan receipts are trust funds under this chapter if the funds are borrowed by a contractor, subcontractor, or owner or by an officer, director, or agent of a contractor, subcontractor, or owner for the purpose of improving specific real property in this state, and the loan is secured in whole or in part by a lien on the property. (V.A.C.S. Art. 5472e, Sec. 1 (part).)

"Section 162.002. CONTRACTORS AS TRUSTEES. A contractor, subcontractor, or owner or an officer, director, or agent of a contractor, subcontractor, or owner, who receives trust funds or who has control or direction of trust funds, is a trustee of the trust funds. (V.A.C.S. Art. 5472e, Sec. 1 (part).)

"Section 162.003. BENEFICIARIES OF TRUST FUNDS. An artist, laborer, mechanic, contractor, subcontractor, or materialman who labors or who furnishes labor or material for the construction or repair of an improvement on specific real property in this state is a beneficiary of any trust funds paid or received in connection with the improvement. (V.A.C.S. Art. 5472e, Sec. 1 (part).)

"Section 162.004. APPLICATION. (a) This chapter does not apply to:

"(1) a bank, savings and loan, or other lender;

"(2) a title company or other closing agent; or

"(3) receipts under a construction contract if the full contract amount is covered by a corporate surety payment bond.

"(b) The Texas Trust Act (Chapters 111 through 115) does not apply to any trust created under this chapter, nor does this chapter affect any provision of the Texas Trust Act. (V.A.C.S. Art. 5472e, Secs. 4, 7.)

"[Sections 162.005-162.030 reserved for expansion]

"SUBCHAPTER B. MISAPPLICATION OF TRUST FUNDS

"Section 162.031. MISAPPLICATION OF TRUST FUNDS.

(a) Except as provided by Subsection (b), a trustee who, with intent to defraud, directly or indirectly retains, uses, disburses, or otherwise diverts trust funds without first fully paying all

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obligations incurred by the trustee to the beneficiaries of the trust funds has misapplied the trust funds.

"(b) A trustee may use trust funds to pay the trustee's reasonable overhead expenses that are directly related to the construction or repair of the improvement. (V.A.C.S. Art. 5472e, Secs. 1 (part), 2 (part).)

"Section 162.032. PENALTIES. (a) A trustee who misapplies trust funds amounting to less than \$250 commits an offense punishable by confinement in jail for not more than two years and by a fine of not more than \$500 or by the confinement without the fine.

"(b) A trustee who misapplies trust funds amounting to \$250 or more commits an offense punishable by imprisonment in the Texas Department of Corrections for not more than 10 years. (V.A.C.S. Art. 5472e, Sec. 2 (part).)

"Section 162.033. ELECTION OF OFFENSES. If the misapplication of trust funds by a trustee constitutes another offense punishable under the laws of this state, the state may elect the offense for which it will prosecute the trustee. (V.A.C.S. Art. 5472e, Sec. 3.)

"[Chapters 163-180 reserved for expansion]

"SUBTITLE C. POWERS OF APPOINTMENT

"CHAPTER 181. POWERS OF APPOINTMENT

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 181.001. DEFINITIONS

"Section 181.002. AFFLICATION

"Section 181.003. CHAPTER NOT EXCLUSIVE

"Section 181.004. CONSTRUCTION

"[Sections 181.005-181.050 reserved for expansion]

"SUBCHAPTER B. RELEASE OF POWERS OF APPOINTMENT

"Section 181.051. AUTHORITY OF DONEE TO RELEASE POWER

"Section 181.052. REQUISITES OF RELEASE

"Section 181.053. RELEASE BY GUARDIAN

"Section 181.054. EFFECT OF RELEASE ON MULTIPLE DONEES

Additions in text indicated by underline; deletions by ~~strikeouts~~

"Section 181.055. NOTICE OF RELEASE

"Section 181.056. RECORDING

"Section 181.057. EFFECT OF FAILURE TO DELIVER OR FILE

"Section 181.058. RESTRAINTS ON ALIENATION OR ANTICIPATION

"SUBTITLE C. POWERS OF APPOINTMENT

"CHAPTER 181. POWERS OF APPOINTMENT

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 181.001. DEFINITIONS. In this chapter:

"(1) 'Donee' means a person, whether or not a resident of this state, who, either alone or in conjunction with others, may exercise a power.

"(2) 'Power' means the authority to appoint or designate the recipient of property, to invade or consume property, to alter, amend, or revoke an instrument under which an estate or trust is created or held, and to terminate a right or interest under an estate or trust, and any authority remaining after a partial release of a power.

"(3) 'Property' means all property and interests in property, real or personal, including parts of property, partial interests, and all or any part of the income from property.

"(4) 'Release' means a renunciation, relinquishment, surrender, refusal to accept, extinguishment, and any other form of release, including a covenant not to exercise all or part of a power. (V A C.S. Art. 7425c, Secs. 1(a) (part), (b), (c), (d), (e).)

"Section 181.002. APPLICATION. (a) Except as provided by Subsection (b), this chapter applies:

"(1) to a power or a release of a power, regardless of the date the power is created;

"(2) to a vested, contingent, or conditional power; and

"(3) to a power classified as a power in gross, a power appurtenant, a power appendant, a collateral power, a general, limited, or special power, an exclusive or nonexclusive power, or any other power.

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"(b) This chapter applies regardless of the time or manner a power is created or reserved or the release is made and regardless of the time, manner, or in whose favor a power may be exercised.

"(c) This chapter does not apply to a power in trust that is imperative. (V.A.C.S. Art. 7425c, Sec. 1(a) (part).)

"Section 181.003. CHAPTER NOT EXCLUSIVE. The provisions of this chapter concerning the release of a power are not exclusive. (V.A.C.S. Art. 7425c, Sec. 11.)

"Section 181.004. CONSTRUCTION. This chapter is intended to be declarative of the common law of this state, and it shall be liberally construed to make all powers, except imperative powers in trust, releasable unless the instrument creating the trust expressly provides otherwise. (V.A.C.S. Art. 7425c, Sec. 13.)

"[Sections 181.005-181.050 reserved for expansion]

"SUBCHAPTER B. RELEASE OF POWERS OF APPOINTMENT

"Section 181.051. AUTHORITY OF DONEE TO RELEASE POWER. Unless the instrument creating the power specifically provides to the contrary, a donee may at any time:

"(1) completely release the power;

"(2) release the power as to any property subject to the power;

"(3) release the power as to a person in whose favor a power may be exercised; or

"(4) limit in any respect the extent to which the power may be exercised. (V.A.C.S. Art. 7425c, Sec. 2.)

"Section 181.052. REQUISITES OF RELEASE. (a) A partial or complete release of a power, with or without consideration, is valid if the donee executes and acknowledges, in the manner required by law for the execution and recordation of deeds, an instrument evidencing an intent to make the release, and the instrument is delivered:

"(1) to the person or in the manner specified in the instrument creating the power;

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"(2) to an adult, other than the donee releasing the power, who may take any of the property subject to the power if the power is not exercised or in whose favor it may be exercised after the partial release;

"(3) to a trustee or cotrustee of the property subject to the power; or

"(4) to an appropriate county clerk for recording.

"(b) An instrument releasing a power may be recorded in a county in this state in which:

"(1) property subject to the power is located;

"(2) a donee in control of the property resides;

"(3) a trustee in control of the property resides;

"(4) a corporate trustee in control of the property has its principal office; or

"(5) the instrument creating the power is probated or recorded. (V.A.C.S. Art. 7425c, Sec. 3.)

"Section 181.053. RELEASE BY GUARDIAN. If a person under a disability holds a power, the guardian of the person's estate may release the power in the manner provided in this chapter on the order of the court in this state in which the guardian was appointed or in which the guardianship proceeding is pending. (V.A.C.S. Art. 7425c, Sec. 8.)

"Section 181.054. EFFECT OF RELEASE ON MULTIPLE DONEES. Unless the instrument creating a power provides otherwise, the complete or partial release by one or more donees of a power that may be exercised by two or more donees, either as an individual or a fiduciary, together or successively, does not prevent or limit the exercise or participation in the exercise of the power by the other donee or donees. (V.A.C.S. Art. 7425c, Sec. 4.)

"Section 181.055. NOTICE OF RELEASE. (a) A fiduciary or other person in possession or control of property subject to a power, other than the donee, does not have notice of a release of the power until the original release or a copy is delivered to the fiduciary or other person.

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"(b) A purchaser, lessee, or mortgagee of real property subject to a power who has paid a valuable consideration and who is without actual notice does not have notice of a release of the power until the instrument releasing the power is filed for record with the county clerk of the county in which the real property is located. (V.A.C.S. Art. 7425c, Sec. 5.)

"Section 181.056. RECORDING. (a) A county clerk shall record a release of a power in the county deed records, and the clerk shall index the release, with the name of the donee entered in the grantor index.

"(b) The county clerk shall charge the same fee for recording the release of a power as the clerk is authorized to charge for recording a deed. (V.A.C.S. Art. 7425c, Sec. 6.)

"Section 181.057. EFFECT OF FAILURE TO DELIVER OR FILE. Failure to deliver or file an instrument releasing a power under Sections 181.052 and 181.055 does not affect the validity of the release as to the donee, the person in whose favor the power may be exercised, or any other person except those expressly protected by Sections 181.052 and 181.055. (V.A.C.S. Art. 7425c, Sec. 7.)

"Section 181.058. RESTRAINTS ON ALIENATION OR ANTICIPATION. The release of a power that otherwise may be released is not prevented merely by provisions of the instrument creating the power that restrain alienation or anticipation. (V.A.C.S. Art. 7425c, Sec. 10.)"

SECTION 2. CONFORMING AMENDMENT. (a)¹ If the proposed Civil Code is enacted by the 68th Legislature,² Chapter 626, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 5923b, Vernon's Texas Civil Statutes), is repealed on the effective date of that code.

"(b) If the proposed Civil Code is not enacted by the 68th Legislature or does not become law, Sections 1, 2, and 4, Chapter 626, Acts of the 63rd Legislature, Regular Session, 1973 (Article

1. Vernon's Ann.Civ.St. art. 5923b note.

2. The 68th Legislature did not enact a Civil Code.

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5923b, Vernon's Texas Civil Statutes), are amended³ to read as follows:

"Section 1. The age of majority in this state is 18 years.
~~[The--purpose--of--this--Act--is--to--extend--all--the--rights--privileges--and--obligations--of--majority--to--all--persons--who--are--at--least--18--years--of--age--it--shall--be--construed--liberally--to--accomplish--that--purpose--]~~

"Section 2. A ~~[Notwithstanding any statutory or decisional]~~ law, ~~[or any]~~ rule, ~~[regulation]~~ or ordinance enacted or adopted before August 27, 1973, that ~~[of this state or of any political subdivision or incorporated city or town of this state, a person who is at least 18 years of age has all the rights, privileges, and obligations of a person who is 21 years of age. A law, rule, regulation, or ordinance which]~~ extends a right, privilege, or obligation to an individual ~~[a person]~~ on the basis of a minimum age of 19, 20, or 21 ~~[7-20 or 19]~~ years shall be interpreted as prescribing a minimum age of 18 years.

~~"[it is specifically provided, however, that with respect to property held by a custodian under the Texas Uniform Gifts to Minors Act, as amended (Article 5923-101, Vernon's Texas Civil Statutes), on effective date hereof and the proceeds and reinvestments thereof, the custodian may elect not to have the provisions of this Act apply by so stating the minor in writing, but such election may be revoked at the election of the custodian.]"~~

"Section 4. The minimum age provisions of the ~~[To the extent that the]~~ Alcoholic Beverage Code prevail to the extent of any conflict ~~[conflicts]~~ with this Act ~~[7-the code prevails]."~~

SECTION 3. CONFORMING AMENDMENT. (a)⁴ If the proposed Civil Code is enacted by the 68th Legislature, Article 6662, Revised Statutes, is repealed on the effective date of that code.

3. Vernon's Ann.Civ.St. art. 5923b, §§ 1, 2, 4.

4. Vernon's Ann.Civ.St. art. 6662 note.

Additions in text indicated by underline; deletions by ~~[strikeouts]~~

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"(b) If the proposed Civil Code is not enacted by the 68th Legislature or does not become law, Article 6662, Revised Statutes, is amended⁵ to read as follows:

"Article 6662. ATTACHMENTS RECORDED. (a) To attach real property [~~Whenever an attachment is levied upon real estate~~], the officer levying the writ shall immediately file a copy of the writ and the applicable part of the return with the county clerk of each [~~the~~] county [~~or counties~~] in which the property [~~real estate--so levied-upon~~] is located.

"(b) If [~~situated, a copy of the writ, together with a copy of so much of his return as relates to the land in said county. Said clerk shall enter in a book, to be kept for that purpose, the names of the plaintiffs and defendants in attachment, the amount of the debt and the return of the officer in full--Should~~] the writ of attachment is [~~be~~] quashed or [~~otherwise~~] vacated, the court that issued the writ [~~in which the attachment suit is pending~~] shall send [~~cause~~] a certified copy of the [~~said~~] order to [~~be sent to~~] the county clerk of each [~~the~~] county [~~or counties~~] in which the property [~~real estate levied-upon~~] is located [~~situated~~]. [~~The clerk shall, upon the receipt of the same, enter in the book aforesaid the names of the plaintiffs and defendants and record the order of the court in full--if the real estate levied-upon is situated in any county other than the one in which the suit is pending, then, in case of failure to make the record aforesaid, the attachment isen shall not be valid against subsequent purchasers for value and without notice and subsequent isenholders in good faith--Each county clerk shall keep a well-bound book for the record of the matters aforesaid, and shall keep a direct and reverse index thereto in which shall be entered the names of all the plaintiffs and defendants in the various attachments recorded by him, and the order of the court aforesaid shall be indexed in the same manner.~~]"

5. Vernon's Ann.Civ.St. art. 6662.

Additions in text indicated by underline; deletions by [~~strikeouts~~]

SECTION 4. CONFORMING AMENDMENT. Chapter 51, Natural Resources Code, as amended, is amended by adding⁶Section 51.086 to read as follows:

"Section 51.086. SALE OF ESCHEATED PERMANENT SCHOOL LAND.

(a) All sales of escheated land that is a part of the permanent school fund must be made to the highest bidder at a price that may not be less than the greater of \$2.50 an acre or the minimum price set by the court under Section 71.107, Property Code.

"(b) On a contract for sale of escheated permanent school land, the initial payment must be in cash and may not be less than one-tenth of the purchase price. The purchaser shall pay the balance of the purchase price in nine equal annual installments and shall pay interest on the deferred amount at the rate of six percent a year.

"(c) When escheated permanent school land is sold, this state shall reserve all minerals in the land for the permanent school fund. (V.A.C.S. Art. 3281 (part).)"

SECTION 5. CONFORMING AMENDMENT. Section 51.121, Natural Resources Code, as amended, is amended by adding⁷Subsection (d) to read as follows:

"(d) If escheated land that is a part of the permanent school fund is leased under this chapter for a purpose other than for grazing, the period of the lease may not exceed two years. The lessee shall pay rent under the lease in money. (V.A.C.S. Art. 3281 (part).)"

SECTION 6. REPEALER. The following articles and acts as compiled in Vernon's Texas Civil Statutes are repealed: 166a, 1288, 1289, 1290, 1291, 1291a, 1291b, 1292, 1293, 1293a, 1293b, 1293c, 1294, 1295, 1296, 1297, 1298, 1301, 1301a, 1301b, 1994, 3264, 3265, 3266, 3266a, 3266b, 3267, 3268, 3269, 3270, 3271, 3272, 3272a, 3272b, 3273, 3274, 3275, 3276, 3277, 3278, 3279, 3280, 3281, 3282, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3810, 3833, 3834,

6. V.T.C.A. Natural Resources Code, § 51.086.

7. V.T.C.A. Natural Resources Code, § 51.121, subsec. (d).

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3835, 3836, 3837, 3838, 3839, 3840, 3841, 3842, 3843, 3844, 3845, 3846, 3847, 3848, 3849, 3850, 3851, 3852, 3853, 3854, 3855, 3856, 3857, 3858, 3859, 3973, 3974, 3975, 3975a, 3975b, 3992, 3994, 5222, 5223, 5224, 5225, 5226, 5227, 5232, 5236, 5236a, 5236b, 5236c, 5236d, 5236e, 5236f, 5236g, 5236h, 5236i, 5236j, 5237, 5238, 5238b, 5239, 5447, 5448, 5449, 5449(a), 5450, 5451, 5452, 5452-1, 5453, 5454, 5455, 5456, 5458, 5459, 5460, 5463, 5464, 5466, 5467, 5468, 5469, 5470, 5471, 5472, 5472a, 5472b, 5472b-1, 5472c, 5472d, 5472e, 5473, 5474, 5475, 5476, 5476a, 5476b, 5476c, 5476d, 5477, 5478, 5479, 5480, 5481, 5482, 5483, 5484, 5485, 5486, 5487, 5488, 5500, 5501, 5502, 5503, 5504, 5504a, 5505, 5506, 5506a, 5506b, 5923-101, 6082, 6083, 6085, 6098, 6099, 6100, 6101, 6102, 6108, 6624, 6625, 6625a, 6626, 6626b, 6627, 6628, 6629, 6630, 6631, 6633, 6634, 6635, 6636, 6637, 6638, 6639, 6640, 6641, 6642, 6643, 6643a, 6644, 6644a, 6646, 6652, 6653, 6654, 6655, 6656, 6657, 6658, 6659, 6660, 6661, 7364, 7375, 7389, 7391, 7392, 7393, 7394, 7395, 7396, 7397, 7398, 7399, 7401, 7401A, 7409, 7417, 7418, 7425a, 7425a-1, 7425a-2, 7425a-3, 7425b, 7425b-1, 7425b-2, 7425b-3, 7425b-4, 7425b-5, 7425b-6, 7425b-7, 7425b-8, 7425b-9, 7425b-10, 7425b-11, 7425b-12, 7425b-13, 7425b-14, 7425b-15, 7425b-16, 7425b-17, 7425b-18, 7425b-19, 7425b-20, 7425b-21, 7425b-22, 7425b-23, 7425b-24, 7425b-25, 7425b-26, 7425b-27, 7425b-28, 7425b-29, 7425b-30, 7425b-31, 7425b-32, 7425b-33, 7425b-34, 7425b-35, 7425b-36, 7425b-37, 7425b-38, 7425b-39, 7425b-40, 7425b-41, 7425b-42, 7425b-43, 7425b-44, 7425b-45, 7425b-46, 7425b-47, 7425b-48, 7425b-48a, 7425c, 7425d, 7425d-1, and 7425e.

SECTION 7.⁸ NONSUBSTANTIVE REVISION. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

SECTION 8. EFFECTIVE DATE. This Act takes effect January 1, 1984.

SECTION 9. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the 8. V.T.C.A. Property Code, prec. § 1.001 note.

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constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 2, 1983, by a viva-voce vote; Senate concurred in House amendments on May 26, 1983, by a viva-voce vote; passed the House, with amendments, on May 24, 1983, by a non-record vote.

Filed without signature June 19, 1983.

Effective Jan. 1, 1984.